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IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

BROADWAY TOWEL SUPPLY COMPANY,
a Corporation, and AMOS BURG,

Appellants.

VS.

BROWN-MEYER COMPANY, a Corpora-
tion,

Appellee.

Appeal from the District Court of the United States
for the District of Oregon.

TRANSCRIPT OF RECORD.

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For Appellants

T. J. GEISLER, 505 Henry Bldg., Portland, Ore.

For Appellee

JOSEPH L. ATKINS, 615 Chamber of Commerce Bldg.,
Portland, Ore.

*In the District Court of the United States for the
District of Oregon.*

Brown-Meyer Company, a Corporation,
Plaintiff,

vs.

Broadway Towel Supply Company, a corporation,
and Amos Burg,
Defendants.

No. 6719.

**BILL OF COMPLAINT.
IN EQUITY.**

To the Judges of the District Court of the United
States for the District of Oregon:

Brown-Meyer Company, a corporation organized
under the laws of the State of Oregon, and located and
doing business in the City of Portland in said state,
brings this its bill against Broadway Towel Supply
Company, a corporation located and doing business in
the City of Portland, state aforesaid, and Amos Burg,
each residents and citizens of the State of Oregon, and
inhabitants of the District of Oregon, and for cause of
suit plaintiff alleges as follows:

I.

That heretofore, on the 13th day of August, 1913,
Charles F. Brown was the true, original and first in-
ventor of a certain new and useful towel holder, not

known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, or more than two years prior to his application for patent therefor hereinafter recited, and not in public use or on sale in this country for more than two years prior to his application for patent therefor hereinafter recited; and that no application for a foreign patent for said invention was filed more than twelve months prior to the filing of the application for the hereinafter recited patent in this country.

II.

That the said Charles F. Brown, being as aforesaid the inventor of said improvement and being a citizen of the United States, made application to the proper department of the Government of the United States, to-wit: the Commissioner of Patents, for letters patent in accordance with the then existing acts of congress, and having complied in all respects with the conditions and requirements of said acts on the 3rd day of November, 1914, letters patent of the United States No. 1115895, signed, sealed and executed in due form of law for said invention or discovery were issued and delivered to the plaintiff aforesaid Brown-Meyer Company, as assignee of the said Charles F. Brown, whereby there was secured to it, its successors and assigns for the term of seventeen years from the 3rd day of November, 1914, the full and exclusive right of making, using and vending said improvement to others to be used, which said letters patent are now of record in the patent office of

the United States, and which is ready here in court to be produced.

III.

That a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent, accompanied by said drawings referred to in such schedule and forming a part of said letters patent. The said letters patent and the said specifications thereto annexed which, or an exemplified copy of which plaintiff will produce as directed by this Court, were duly recorded in the Patent Office.

IV.

That by an instrument in writing bearing date August 7, 1913, the said Charles F. Brown duly assigned, transferred and set over unto the plaintiff, Brown-Meyer Company, the entire interest in and to the said invention and letters patent for, to and in the entire United States and all of its states and territories, to be held and enjoyed by it for the life of said patent, which assignment was duly recorded on August 13, 1913, in the patent office of the United States in Liber 192, page 290 of Transfers of Patents as by said assignment with the certificate of recording thereto affixed or a duly certified copy of said assignment in court to be produced will more fully appear, and the plaintiff is now the exclusive owner of said letters patent and of the invention and improvement therein described, and claims and owns all rights secured by said letters patent since the date thereof, and is entitled to be protected in the enjoyment of the same.

Yet the said defendants, well knowing the premises and the rights secured by your orator, as aforesaid, but contriving to injure your orator, and to deprive it of the benefits and advantages which might and otherwise would accrue unto it from said invention after the issuing of the letters patent and after the vesting of the same in your orator, as aforesaid and before the commencement of this suit, did as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of its rights and in infringement of the aforesaid letters patent within the District of Oregon and elsewhere in the United States unlawfully and wrongfully, and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, towel holders made according to and employing and containing said invention and that they still continue so to do; and that they are threatening to make the aforesaid towel holders in large quantities and to supply the market therewith and to sell the same.

All in defiance of the rights acquired by and secured to your orator, as aforesaid, and to its great and irreparable loss and injury, and by which it has been and still is being deprived of great gain and profits which they might and otherwise would have obtained, and which have been received and enjoyed, and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

VI.

And your orator further shows unto Your Honors,

on information and belief, that said defendants have sold large quantities of said towel holders, and still have a large quantity on hand which they are still offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know, and prays a discovery thereof. And your orator says that the use of said invention by said defendants and their preparation for and avowed determination to continue the same, and their other unlawful acts as aforesaid, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

And your orator further shows unto Your Honors that it has caused notice to be given to said defendants of said infringements and of the rights of your orator in the premises, and requested them to desist and refrain therefrom; but they, the defendants, have disregarded said notice and refused to desist from said infringements, and still continue to make, use and sell said towel holders.

And forasmuch as your orator has no adequate relief except in this Court, to the end that the defendant may be compelled to account for and to pay over the income thus unlawfully derived from the violation of the rights of your orator as above, and be restrained from any further violation of said rights, your orator prays that Your Honors may grant a writ of injunction restraining the defendants and each of them from any further construction, or sale or use in any manner of said patented

invention or any part thereof, in violation of the rights of your orator as aforesaid, and that the towel holders now in the use of the said defendants may be destroyed, or delivered up to your orator for that purpose. And also, that Your Honors, upon the entering of a decree for infringement, as above prayed for, may proceed to assess, or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendants as aforesaid, the damages your orator has sustained by reason of such infringement, and that Your Honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the wilful and unjust infringement by the said defendants as herein set forth.

And your orator also prays for a provisional or preliminary injunction, and for such other relief as the equity of the case may require, and as to Your Honors may seem meet.

(Signed) BROWN-MEYER CO.,

R. P. Meyer,

Vice-Pres.

Joseph L. Atkins,

Solicitor for Plaintiff.

Here follows verification.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

ANSWER.

IN EQUITY.

Now come the Broadway Towel Supply Company, erroneously described as being a corporation, but in fact being a co-partnership composed of Amos Burg, Charles W. Burg and W. C. Smith, all of Portland, Oregon, and doing business as Broadway Towel Supply Company, these defendants appearing by T. J. Geisler, their attorney, and make answer to the bill of complaint herein as follows:

I.

These defendants deny that Charles F. Brown at any time was the true, or original, or first inventor of a certain new or useful towel holder not known or used by others in this country before his invention or discovery thereof, nor patented or described in any printed publication in this, or any foreign country before his invention or discovery thereof.

II.

That these defendants deny any knowledge or information sufficient to form a belief as to whether said Charles F. Brown at any time made an application for Letters Patent of the United States. They admit that letters patent of the United States, bearing date the 3d day of November, 1914, numbered 1,115,895 were is-

sued to the plaintiff herein, as alleged assignee and successor of said Charles F. Brown, but that said letters patent refer merely to certain specific, limited and narrow improvements in towel holders, as hereinafter more fully set forth.

III.

These defendants deny any knowledge or information sufficient to form a belief as to whether or not said Charles F. Brown ever assigned, transferred, or set over unto the plaintiff the entire, or any interest in said alleged invention, or the letters patent therefor in or to the United States, or any of its states or territories, or as to whether the plaintiff now is the exclusive owner of, or has any interest in said letters patent, or the invention or improvement therein described.

IV.

These defendants further deny that they, well knowing of any rights vested in the plaintiff or in its said alleged assignor, Charles F. Brown, or for the purpose of contriving to injure either of them, or to deprive either of them of any benefits or advantages which otherwise might or could accrue unto them, or either of them from any invention of the said Charles F. Brown, or after the issuing of any letters patent to plaintiff, or before the commencement of this suit, without license or allowance, or against the will of plaintiff, or in violation of its rights under said letters patent within the district of Oregon or elsewhere in the United States unlawfully, or wrongfully, or in defiance of the rights of the plaintiff or otherwise did make, construct or use, or vend to oth-

ers, towel holders made according to, or employing or containing said alleged invention, or that they are at present so doing. Or that they are threatening to make towel holders embodying said alleged invention, or to supply the market therewith, or to sell the same.

These defendants further deny that they did anything in the premises at any time in defiance of any rights acquired or secured by plaintiff, or to its loss or injury, or by which the plaintiff has been or is being deprived of any gain or profit which plaintiff might, or otherwise would have obtained.

These defendants further deny that they have sold large quantities of towel holders embodying said alleged improvement, or that they have a large quantity of such towel holders on hand which they are offering for sale, or that they made or realized any profits or advantages therefrom, except that defendants admit that they did, for a limited time, use towel holders embodying the invention set forth in said alleged letters patent, such use being under the circumstances and conditions as hereinafter set forth, and not otherwise.

And these defendants further deny that they have, or are still making or using, or selling towel holders embodying the improvements set forth in said alleged letters patent, or ever made or used the same, except as hereinafter specifically stated.

And these defendants for a further and separate defense herein allege:

That the alleged invention of said Charles F. Brown

related to towel holders designed for supplying individual towels to users, and that this was a well and highly developed art before said Brown entered into the field with his said alleged improvement, as is shown by the following patents:

Letters Patent of U. S. issued to:

N. S. Baldwin and E. S. Goodwin, Number 557,754, date Apr. 7, 1896.

J. G. Cooner, Number 908,076, date Dec. 29, 1908.

J. Rouso, Number 42,398, Des., date Apr. 9, 1912.

L. Straub, Number 1,038,984, date Sept. 17, 1912.

T. K. Taylor, Number 1,052,292, date Feb. 4, 1913.

C. Reid, Number 1,067,622, date July 15, 1913.

T. Heins and E. R. Galland, Number 1,078,501, date Nov. 11, 1913.

That therefore, the alleged improvement of said Brown, if it did constitute an invention, was of a very specific and limited character, and must be construed accordingly in order not to encroach upon the rights which were vested in the general public prior to and at the time said Brown entered said field.

That when said application for letters patent referred to by plaintiff in his bill of complaint came up for examination before the Commissioner of Patents of the United States, the latter rejected said application because of the alleged invention therein described and claimed as lacking patentable novelty, and cited against the same the above specified letters patents, and that thereupon said Brown amended his said application so

as to distinguish his alleged invention from and disclaim the prior state of the art as described by said patents; and likewise then waived, abandoned and cancelled the broader claims theretofore made by him in his said application and restricted himself to the specific claims now appearing in said letters patent.

That the defendants admit that they made and used a few towel holders embodying the features set forth in said claims of said alleged letters patent, but such making occurred some time before said letters patent were issued, and before the defendants had any knowledge of said Brown's alleged invention, or that said letters patent were to be issued therefor; and immediately after the defendants were informed of said letters patent, they notified the plaintiff that they would discontinue the use of towel holders embodying features covered by said letters patent, and did thereupon proceed immediately to change over their said towel holders, so that same would and did not infringe upon said letters patent. That said defendants used their said towel holders during the period from November 3d to about November 30, 1914. That the towel holders so used were used by said defendants in supplying customers of theirs with whom they had been dealing for a long time prior to said November 3d, 1914. That such customers did not desire to be supplied with towel holders embodying plaintiff's alleged improvement, but merely desired any device which the defendants would supply for that purpose. That the business of supplying laundry towels in connection with towel holders is one of considerable expense and sharp competition, and that defendants made no

profit in using said towel holders during said period between November 3d and November 30, 1914, and that the plaintiff suffered no loss or damage by defendants' acts whatsoever. Nevertheless, for the purpose of amicably adjusting the matter with the plaintiff, the defendants, prior to the commencement of this suit, offered to pay the plaintiff the sum of Twenty-five (\$25) Dollars, and promised not to use the improvement covered by said alleged letters patent, and did faithfully live up to such promise, for they did not use any towel holders embodying said improvement since about said 30th day of November, 1914; but the plaintiff declined said offer, and refused to accept any other sum in settlement of its alleged damages whatever, except the sum of Five Hundred (\$500) Dollars, which demand was exorbitant and wholly without equity, and therefore these defendants refused to pay the same.

And the defendants further allege that the plaintiff is wrongfully trying to drive these defendants out of the business of supplying towels in connection with a fixture of any kind, notwithstanding the plaintiff well knows that the defendants, ever since said 30th day of November, 1914, have been, and are still using only such device as is open to use by the general public.

That the plaintiff, notwithstanding the premises, has threatened, and instead of confining itself to this suit and await the termination thereof, is threatening to bring other suits against the various customers of these defendants, pretending that the towel holder which the defendants are using is an infringement upon said al-

leged letters patent, although well knowing that such is not the case as aforesaid; and if plaintiff be permitted to proceed in such threatened conduct these defendants will be greatly and irreparably injured, and their rights in the premises cannot be protected save by a restraining order of this Court against the plaintiff during the pendency of this suit.

WHEREFORE, the defendants pray that the bill of complaint herein be dismissed, and that they have their costs and disbursements wrongfully incurred herein; and that the defendants also have such other and further relief in the premises against the plaintiff as to the Court may seem just and in accordance with equity.

BROADWAY TOWEL SUPPLY COMPANY,

By Amos Burg,

Member of Firm,

Amos Burg.

T. J. GEISLER,

Solicitor for Defendants.

Here follows verification.

(Title.)

A CONDENSED STATEMENT OF THE TESTIMONY TAKEN ON THE TRIAL
OF THIS CASE.

RALPH P. MEYER, called as a witness on behalf of plaintiff, being first duly sworn.

DIRECT EXAMINATION.

Questions by Mr. Atkins:

I am the vice president of the Brown-Meyer Company, the plaintiff in this case.

Plaintiff's Exhibit A in the case is the patent to C. F. Brown. It is a towel device for the use of individual towels in public use. On this patent this suit is brought.

This article (referring to Plaintiff's Exhibit C) is the article described in the patent in suit, and in use in different public buildings in the city. It corresponds in every particular with the device described in the patent. In service, that is, in practice, this shelf is placed on the wall, with screws fastened in. We have a plate, and we have an assembling member that fits in this plate with a shoulder, an eye through the assembling member whereby the chain connects the assembling member with a lock, and the shackle on the lock to the eye underneath the shelf. That admits of the towels being freely handled in this method. This shackle fits through the loop of the chain that it locks. That retains the towels. Now, the length of the chain gives plenty of room for more than one individual to use it, giving freedom

of the chain so that two or three could use it in case of necessity. The towel is brought over, used, and dropped into a receptacle, or on the floor.

A device similar to that device was used by the defendants. It resembles this device in evidence exactly. It was an exact duplicate.

Knowledge of such use by defendants first came to me about November 10, 1914. Such use was made in the Courthouse of the city, and the Broadway building. The Crystal Laundry Company used the device in the latter place, and the Broadway Towel Supply Company used it in the Courthouse.

MR. GEISLER: We have those devices here, and when it comes to our part of the testimony, we will introduce them in evidence.

COURT: You admit that defendants' device as used between November 3, 1914, and about the beginning of December, 1914, is an infringement of the patented device?

MR. GEISLER: Well, it was at that time. It is not now.

COURT: Because you are not using it, or have you changed it?

MR. GEISLER: We have changed it, your Honor. Device in evidence marked "Plaintiff's Exhibit C."

Both of the defendants used this device about the month of August, 1914, prior to our patent. This use began with the Broadway Towel Supply in the Courthouse in August of 1914. We had the contract there,

defendants' device was put in at a cheaper price, and we lost the contract from July of that year.

The defendant, the Broadway Towel Supply Company used this device, substantially identical with ours, to oust us from our contract in the Courthouse.

The use of this device by defendant continued until after we had acquired our patent, and our attorney had written them regarding the infringement. After that day, they made some little change in it.

I think that the device which they are now using is an infringement of our patent.

I saw that device in use in the Courthouse last Friday. Referring to Plaintiff's Exhibit C. The free end of the chain is secured to the bottom of this upright post, and the latter is also secured in place by the shackle of the lock. The latter is inserted through the end of the chain, which we open up a link a little bit, and that slips through, and then it enters into the assembling member here (illustrating on Exhibit C) and that connects the two. The construction of this chain is such as to permit the expanding of the terminal link to receive the shackle. It answers the purpose of a ring.

CROSS EXAMINATION by Mr. Geisler.

Q. You say that the Broadway Towel Supply Co. commenced using this device which you claimed was an infringement on your letters patent in August, 1914, for the purpose of ousting you, in the use of your device, from the Courthouse?

A. I did.

Q. What makes you make that statement?

A. Well, we had the contract, and the Broadway Towel Supply had been running after them, and they agreed to put in the same device at a cheaper price, and the Courthouse accepted the proposition.

Q. You had a contract with the Courthouse of Multnomah County, you say, at that time?

A. I did.

Q. Is it not a fact that your contract with Multnomah County Courthouse expired about July 1, 1914?

A. It did.

Q. Then, what makes you say, I repeat, that the Broadway Towel Supply Company ousted you from the Multnomah County Courthouse?

A. Because Multnomah Courthouse informed us that the price was cheaper, and they could get the same thing to hold their towels that we had, and they naturally would accept the cheaper price.

Q. It was awarded, I understand, to the Broadway Towel Supply Company on competitive bid, was it, or not?

A. I think not. We had no bid whatsoever. We were just notified. We never had a bid on the contract. That would be the 1914 to 1915 year.

Q. You did not bid, then, for the work at the Multnomah County Courthouse?

A. No.

Q. In fact, you made no attempt to renew your contract with the Multnomah County Courthouse? Is that correct?

A. They didn't give us any opportunity.

Q. And you just let the matter rest?

A. No; oh, no.

Q. What did you do to try to get a contract from the Multnomah County Courthouse?

A. I went to see them about it, and asked them why we should lose it. The service was satisfactory.

Q. I will show you here a model, consisting of an upright support, which we will assume represents a wall, and on that wall is affixed a bracket—is that correct? Which bracket corresponds with the bracket of the device that you put in evidence.

A. Well, I don't know as the bracket makes any difference, whether it is underneath or above.

Q. Well, it is a mere shelf?

A. It is a shelf.

Q. And this shelf on this model that I speak of is a mere shelf?

A. That is a shelf.

MR. ATKINS: If your Honor please, I should like to ask whether this model is to be offered in evidence?

COURT: I presume it will be.

MR. GEISLER: Oh, yes. If it wouldn't be out of turn, I would offer it in evidence now, as far as that

is concerned. Do you consent to my offering it in evidence now?

MR. ATKINS: When it is proven, yes.

MR. GEISLER: All right.

Defendants here introduce in evidence, by consent, device marked "Defendants' Exhibit 1."

A photo cut of such device is here shown.

Cross examination continued.

That was the device which was used by defendants from November 3d to December 1, 1914.

After December 1st a change was made in this device.

The basket has a piece of metal by which the ring is fastened. This ring is open on the side, thereby giving a link to which to fasten the lower end of the chain, just the simple matter of looping it over. Now, it is just as easy, unlooped, to slip that off and shackle it back to the original upright. It is not fastened firmly there. It is made for the purpose of slipping off. And it appears to me that that is just getting away slightly from the connection to the upright.

Prior to December 1st the defendant Broadway Towel Supply Company, and also the Crystal Laundry Company, fastened the lower end of the chain to the shackle of the lock, and the lock itself was fastened to the bottom end of the post.

Then the lower end of the chain was removed from the shackle of the lock, the lock was merely used thenceforth to keep the post in place, and the lower end of the

chain, instead of being in any way connected with the shackle of the lock, or to the bottom end of the post, was fastened to a ring in the basket.

Plaintiff rests.

WILLIAM C. SCHMITT, called as witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION, by Mr. Geisler.

MR. GEISLER: I offer in evidence the file wrapper covering the plaintiff's patent.

Marked "Defendants' Exhibit 2."

MR. GEISLER: I will next offer in evidence the patents which are cited by the examiner in this case, and which the inventor had to avoid in order to get even the narrow patent that he did get. The first patent I offer in evidence is that granted to N. S. Baldwin and E. S. Goodwin, April 7, 1896, No. 557,754.

Marked "Defendants' Exhibit 3."

I next offer the patent granted to J. G. Cooner, December 29, 1908, No. 908,076.

Marked "Defendants' Exhibit 4."

I next offer the patent issued to J. Rousso, April 9, 1912, No. 42,398.

Marked "Defendants' Exhibit 5."

I next offer the patent issued to T. K. Taylor, February 4, 1913, No. 1,052,292.

Marked "Defendants' Exhibit 6."

Next the patent issued to Guy Reid, July 15, 1913, No. 1,067,622.

Marked "Defendants' Exhibit 7."

MR. GEISLER: I call particular attention to this patent of Guy Reed as showing all the essentials of the alleged invention, barring the moving of the point of the chain from one place to another.

I also offer in evidence the patent issued to T. Heins et al., November 11, 1913, No. 1,078,501.

Marked "Defendants' Exhibit 8."

Also the patent issued to Louis Straub, September 17, 1912, No. 1,038,984.

Marked "Defendants' Exhibit 9."

MR. SCHMITT testified: I am 29 years of age and reside at 380 East Forty-fourth Street North, this city.

I am a civil engineer and mechanical expert.

I graduated from Notre Dame University in June, 1910, in the Civil Engineering department.

Since I graduated from college I have been following particularly patent work.

I am now engaged in such work, in addition to general engineering work.

I am also regularly admitted to practice before the United States Patent Office.

Witness shown patent issued to L. Straub, being "Defendants' Exhibit 9."

I have examined that patent. This model embodies the particular features shown in this patent to Straub.

Model offered in evidence as "Defendants' Exhibit 10."

Model admitted subject to objection if it fails to correspond with patent.

The post in the Straub device has a rotary movement similar to the post in the Brown patent.

With respect to the use of means for holding this Straub rotary post in place, so that it cannot be withdrawn, I do not think there is anything specially original to use means such as employed for that purpose by Brown in his patent. It would be a waste to use two locks, one for locking each post, so therefore that locking bar is substituted, which permits the use of one lock to keep both posts from being withdrawn or rotated. I consider this post, which is made with a curved end, and which is adapted to be rotated, to be the equivalent of the post in the Brown device.

I have examined the Reid patent, No. 1,067,622, being Defendants' Exhibit 7.

Model marked "Defendants' Exhibit 11" offered in evidence as representing the Reid patent. Model admitted subject to objection for any discrepancies that may be pointed out therein.

Witness continues:

Figure 4 of the Reid patent shows another construction, and in this case it is practically identical with the construction of the patent in suit, except that in the Reid

device the end of the chain is fastened to the wall instead of being fastened to the end of a post.

COURT: That is the very thing that the defendants want to get away from here. The end of the chain is fastened to a basket instead of being fastened to the end of a post. But I understand the Patent Office has said in effect that that device was not an infringement upon the plaintiff's device; that is to say, the Patent Office had this device under consideration at the time it issued plaintiff's patent.

MR. GEISLER: Exactly, your Honor.

COURT: Well, do you want this Court to say that the Patent Office is mistaken in that respect?

MR. GEISLER: No, your Honor. No, I wish the Court to affirm the decision of the Patent Office.

COURT: Well, I understand the Patent Office, when it issued the plaintiff's device, had this device before it, and, notwithstanding the consideration of this device, it issued the plaintiff's patent.

MR. GEISLER: Yes, your Honor, correct.

COURT: So therefore the Patent Office has said that this device was not an anticipation of the plaintiff's device.

MR. GEISLER: And in that the Patent Office, we will say, was correct. It is a very close question. This is a combination patent which the Patent Office granted to Brown. A combination patent assumes that each of the elements which are associated in a particular form are old and public property, because it was in the

power of the application for patent, if he chose and if he so claimed, to cover any particular element by itself, irrespective of the combination. But in this particular case there are four claims allowed, and each of these four claims covers merely a combination. Now, then, it also is governed by the rule which controls combination patents, as laid down by our United States Supreme Court, and followed in every tribunal where the question has come up, which rule is this: That, in order to anticipate or infringe a combination patent, the two devices which are compared must agree in three different particulars. Those three particulars are (1) the means must be identical; the law of cooperation which controls the use of the means must be identical; the purpose for which the means was so cooperatively employed must be identical. And failure in that particular, or in any one of these points of comparison, would make the device, as the case may be, either an anticipating device or an infringing device. Now, as far as the two devices here are concerned, there is quite an elaborate argument in the file wrapper. In the first place, the examiner decided not to allow anything. Finally, by the persuasion of counsel, he was induced to allow this narrow claim. The narrow claim, your Honor, merely introduces a purpose and a new result in the Brown device which differentiates it from the Reid device. We claim that we are following the Reid device, and not the Brown device. The Reid device, of course, was applied for before the Brown device was applied for. In fact, the patent had been issued before the Brown application was placed on file. So it is presumed, as a matter of law, of course, that Brown, what-

ever he invented, invented with the Reid device in his mind, and attempted to get some improvement over that, which Reid did not have.

And just one more matter. The only point that he claimed is this, your Honor—that by bringing the two ends of the chain closely together he gets a greater sweep of the chain, and claims to have greater convenience. And if we take the Reid device and bring the lower end of the chain in close proximity with the upper end, then we get the same sweep of the chain that the plaintiff has made such a difference as to entitle him to a patent; and on that alone was the patent issued.

COURT: This is a very narrow issue. You claim that you are using more nearly the Reid device than you are the Brown device?

MR. GEISLER: Yes, your Honor.

Examination of witness continued:

I have looked over the Brown device and find that all of the elements in there are old, well-known elements. I cannot find a single one that has not been well known for some time.

CROSS EXAMINATION.

I referred to elements of this device singly by themselves.

I am acquainted with the Brown patent sued upon in this case, and am familiar with the construction of the device and the mode of its operation.

Plaintiff's Exhibit C correctly represents the subject matter of the Brown patent. The assembling member

or post is secured to the shelf by a lock, which prevents it from being drawn out.

The lock also performs the function of securing the end of the chain to the bottom of the assembling member. It serves, as a single element, to perform those two functions.

When the towels for service are laid upon the shelf, the apertures 22 on the corner of them, as shown here, are brought into line with the socket in the shelf. When so aligned, the assembling member may be introduced through all of the apertures of the towels into the socket, but it strikes me a more practical way would be just to string them on here first.

If the pile of towels were arranged with the apertures in the corner in line, that pile could be laid upon the socket and secured as a single member to the shelf, by the introduction through the apertures of the assembling member without handling the intermediate towels.

When the towels are in place upon the shelf, the topmost towel can be removed and strung out upon the chain and the user therefore has the full stretch of the chain to enable him, or to permit him, to use the towel, without coming in contact with the shelf. It would be possible for several to use towels upon that chain at the same time without interfering one with another, through perhaps each one would not have the same efficiency as if they were using them singly.

COURT: That would depend upon the length of the chain?

MR. ATKINS: Exactly.

Referring to the model, Defendants' Exhibit 11, there is a different type of lock in the Reid patent, though they are both standard locks.

The end of the projecting arm shown in the model Exhibit 11 is different from that shown in the Reid patent. The end of said arm, to which the chain is attached, is also different from that shown in the patent. It is curved to a different degree. The construction shown in the two patents shows curved ends on each of them, but the degree of curve is different in the model.

The difference between the model and the Reid patent is adapted to correct a deficiency in the Reid construction. It would appear to me that that curvature was put on there in order to keep the towels from slipping. The device on the free end of the chain in the Reid patent is different from that shown in the model, No. 11.

Referring to the Straub patent, Defendants' Exhibit 9, the bail, section 6, as it is called in that patent, is immovable while in service. It is only movable for the purpose of applying towels to it. When the towels are applied it is immovable. The soiled towels are separated from the clean towels in service only by the width of the receiving plate 2. There is no chain connection of any sort on the Straub device.

There is this difference between plaintiff's device and the Straub device, in respect to the assembling member 4 of the one and the bail section 6 of the other, namely, that plaintiff's assembling member 4 is rotat-

able when it is in service, and the Straub bail section 6 is rotatable only when it is not in service.

W. C. H. SMITH, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am one of the partners of the Broadway Towel Supply Company, and was such partner in July, 1914.

I heard Mr. Meyer testify here about ousting plaintiff's device from the Multnomah County Courthouse, and the instituting of our own towel rack. The circumstances in connection with our getting the business there at the Courthouse were:

I went up to the Courthouse, and I was talking to the commissioners there, and I had asked them if I could get the business, and they told me yes. And I knew a couple of them pretty well. I took the bid at 28 cents a hundred. They asked me if I could put the towels in for that. I told them yes. So they gave me a contract for one year. They never asked me what kind of shelf I would put in, or anything. They just asked me if I would put in the towels. I told them I would. So I finally had a rack made, and I seen the racks they had in there, and I took the copy of them, but not exactly like theirs—a little bit different. And I noticed underneath the rack there was no patent, nor nothing on the racks to show there was any patent on them. And thinking there was no harm about it, I went ahead and had the carpenter make some. A little while afterwards, I was notified not to use those racks any more. So I

finally went to Mr. Geisler, and he told me he would see into the matter. So I left it to him, and finally he told me to make a change. I finally made the change. I disconnected the chain from the lock and fastened it into the basket. And from that time on I went every day, and noticed the chains were never put back onto the locks any more. They was always fastened to the basket.

The County Commissioners did not demand of me that we furnish any particular kind of device.

I first found out that Mr. Brown, or Brown-Meyer Company, or the Yale Laundry Company, claimed a patent on their towel rack about a week later. I think it was a week later. I went down to one of the buildings, and I looked at the shelves there to see if there was any patent applied for, and I found out there was just a little stamp, stencil stamp, was put underneath the board. There was "Patent applied for" and that is all I noticed.

I first found out that they had obtained a patent I think in November, 1914. Then I went to see our attorney about it, to find out the facts in the case with regard to the patent.

And then after that I made this change of disconnecting the lower end of the chain from the bottom of that post and dropping it into a basket, fastening it to a basket.

After I made that change, I had occasion to go into the buildings where the device was used, and see how it was being used every day, and found that they were

using it just the way that I told them to use it, with the lower end of the chain disconnected with the bottom of the post.

MR. GEISLER: Mr. Atkins and I are going to stipulate that the Broadway Towel Supply Company, for the purpose of adjusting this infringement between November 3, 1914, and approximately December 1, 1914, offered to pay the plaintiff here \$25. It is so alleged in the answer, and by stipulating it, we can shorten the record.

MR. ATKINS: Yes.

MR. GEISLER: And that the offer was made after we had given them an itemized statement showing that the actual profit made was not to exceed \$7.50 for the use of that same device during that period of time. Also that the plaintiff refused the offer, that is to say, Brown-Meyer Company, and demanded the sum of \$500 in settlement of that period. That is correct.

MR. ATKINS: It is stipulated to that extent, except, of course, as to the itemized statement, we know nothing about that. There was a statement rendered, but it was not made under oath, and it did not conform to our view of the facts. We do stipulate that there were negotiations for settlement, that an offer of \$25 was made, and that a counter proposition was made.

MR. GEISLER: We are also going to stipulate, I believe, that we have witnesses here that will corroborate Mr. Smith, on behalf of the Broadway Towel Supply Company, and Mr. Clancy, who will testify later in behalf of the Crystal Laundry Company, to the effect

that it was their duty in the capacity of janitor or superintendent of these various buildings to inspect these devices as used in their buildings daily, and that they were not used other than by having the lower end of the chain hanging down and connected to a basket; not used as the Brown device was used, but used as we demonstrate here.

Examination of witness continued:

I kept the books of the Broadway Towel Supply Company, and I kept track of the towels I put in every day in the buildings, and I don't think our profits amount to over about \$7.50 for that time till we started putting the chains underneath. Really there is no profit in it at all; hardly, to keep the whole business.

CROSS EXAMINATION.

In examining the plaintiff's devices in the Court-house, I found no patent mark. Later, after we were notified, I found "Patented" marked on some of the devices that were used.

I made this change I referred to just after I was notified not to use them under the lock any more.

I got a notice not to use the chains fastened to the lock any more, to discontinue from using them. I finally put them to the end of the basket. That was, I think, just some time near December 1, 1914, after the patent came out.

It was about the 3d of November, 1914, that I got notice from the lawyer not to use them chains any more the way I was using them.

I had consulted Mr. Geisler with regard to the question of infringement at that time.

We got notice from plaintiff's company to desist from infringement.

My attorney told me not to fasten the chains underneath the lock any more, so I guess he must have had the notice.

I used this particular kind of device in the Courthouse because I saw it there, and I didn't think there was any patent on it; it is such a simple thing to copy after. There was no "Patent applied for," I think, which the law requires, when you put out an appliance, that you have to put on it before you put them out. That is the way I understand it.

I did not reproduce the plaintiff's device exactly. Ours is a little different, but it works just the same as the other, and was a substantial duplicate of it.

I was not required to use any particular sanitary device in the Courthouse. I was just to put in my own ideas, but was required to install some such device. The one I installed was the one they had been using before I put ours in.

Here defendants offered in evidence an extract of the Ordinance passed by the Council of the City of Portland, July 29, 1914, No. 29,270, pertaining to the prohibition of roller towels in public places, and such extract of the Ordinance was duly received and reads as follows:

An Ordinance to prohibit common drinking cups and common towels in the City of Portland, and providing a penalty for the violation thereof, the City of Portland does ordain as follows:

1. No person, firm or corporation in control of, or in charge in the city * * * public building * * * or in any lavatory maintained or used by the general public shall place, furnish or keep any common towel for public use, or permit their use.

2. * * * The term 'common towel' as used herein shall be construed to mean roller towel, or towel intended or available for common use by more than one person and not being laundered after such use.

3. Any person, firm or corporation violating any of the provisions of the Ordinance shall, upon conviction thereof in the municipal court be punished by a fine of not less than ten dollars nor more than two hundred dollars.

Passed by Council, July 29, 1914.

AMOS BURG, called as a witness on behalf of defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I reside in Portland, and am one of the partners of the Broadway Towel Supply Company.

I went down to see Mr. Brown. I says, "It is a pity that we have to go to court for a trifle like this. Let's settle it up, whatever it is." So he didn't give me any

particular answer; he thought it best for the court to decide it. So later on we arranged a meeting. We have what is called a Laundrymen's Club here in the city. And Mr. Brown and myself, Mr. Meyer and Mr. Allen, we met up there.

We talked the matter over, and the Brown-Yale people, or Mr. Meyer and Mr. Brown, told us that they would settle for \$250.00. We, we wasn't prepared—there was another party into it, Mr. Bechtel, from the Palace Laundry, and we were to see him in the meantime—I think he was out of the city; or some way Mr. Allen was to see him. And finally Mr. Allen telephoned me, and he says, "You better see Mr. Bechtel, because I can't catch him."

The first thing we knew, why, they sued us, and that was the end of it. We asked Mr. Brown to give us ten days to consider settlement. There may have been some two weeks thereafter before action was brought.

Our profits on the towel supply between the 3d of November and the first of December, 1914, figures \$7.50 but we offered them \$25.

CROSS EXAMINATION.

This conference took place before the suit was brought.

P. G. ALLEN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

MR. GEISLER: Now, with respect to the Crystal Laundry Company, defendant, we will stipulate, if your Honor please, if Mr. Atkins will consent, that they made

an offer of \$50 to settle for the infringement during the period from November 3, 1914, to December 1, 1914, and that the offer was declined, and the plaintiff corporation demanded \$300. Isn't that right?

MR. ATKINS: As set forth in the answer, whatever that is. In agreeing to this stipulation, of course, your Honor will observe that there was a difference in each case between the plaintiff and the defendant as to the nature of the infringement. They wish to hold that they had entirely avoided infringement, and it was upon some such basis as that that a mere nominal offer of settlement was made. Our offer of settlement was a complete settlement, as affecting the relative rights of the parties under the patent. So that it comes right down to the question in issue as to infringement. With that statement, why, the stipulation is made.

DIRECT EXAMINATION.

I am president and manager of the Crystal Laundry Company.

I first heard of the Brown patent some time during November, 1914.

I immediately, after receiving a letter from Mr. Atkins calling my attention to the fact that we were infringing on this particular patent of theirs—I called on Mr. Brown the following morning. And in his office we were discussing what kind of terms we could come to on our infringement if we had one. I told him that if he had a patent, I appreciated the fact, but I would like to see if he did have a patent, and if he had one, we

would see if we could come to some kind of understanding, whether we should go on and use it or discontinue it, or what. At that time Mr. Brown said it would be a matter he would have to refer to Mr. Atkins, his attorney.

The same day, I think in the afternoon, I called on Mr. Atkins at his office, and, after talking with him, he said that he didn't know exactly what would be the amount, but he would take it up with Mr. Brown again, and referred me back to Mr. Brown. Then I called on Mr. Brown again, and then he called in Mr. Meyer, and after a lengthy discussion one way and the other, it seemed to me that they didn't want a settlement on infringement basis, but they wanted to restrict us to the right to make a certain price on these towels; if we could come to a price that we would establish and maintain by their dictation, then they would be willing to make a price. So after we talked there quite awhile, why, Mr. Meyer and Mr. Brown both said—well, they referred back to their attorney, and we would make an appointment at such a time, we would all meet there. And I think that same day at one o'clock we met in Mr. Atkins' office. Mr. Meyer was there, but Mr. Brown was not there. And after we talked about it quite a bit again, I told them that I would not consent to any such proposition that would allow them to dictate the price that we should furnish these towels for, and if that was the only settlement, it would be out of the question; that we would discontinue the use of it if they had a patent. At that time I didn't know if they had a patent or not. And I told them that I would make an offer of an amount,

and if that was satisfactory, providing their patent was right, we would settle that way. Otherwise I would take it up and consult an attorney, and see whether we had any rights or not, or whether there was a patent.

The following day I consulted attorney T. J. Geisler, who sent to Washington to get the record of the case.

After we had gotten the record and looked it over in consultation with our attorney, I made a reasonable offer, that is, what I thought was better than to have any litigation over it. I made an offer to the Brown-Meyer people of \$100, and at that time they wouldn't consider it. They said they wanted \$300, and a restriction on the price; that is, they wanted to say towels should be furnished at a certain price. And I told them that, under those conditions, we would discontinue using the part of the patent that they claimed was an infringement; and we did so at that time.

The profit the Crystal Laundry Company made in using this device similar to the Brown patent from November 3d to December 1, 1914, was about \$15.07.

I made a statement of that to the other parties.

I authorized our attorney to offer \$50, but it was not accepted.

I afterwards had a meeting with Mr. Brown, Mr. Meyer, Mr. Burg and myself, at Commercial Club building. There was quite a lengthy discussion relative to whether or not we would give them the rights to maintain a price on these particular towels; and after spend-

ing considerable time talking one way and the other, Mr. Brown said, "Well, we will make you a proposition." He says, "There is three of you. There is the Palace Laundry that has a rack, and there is Broadway Towel Supply Company, and yourself; and we will make you a proposition of \$250 for the three. That will cover this infringement." Mr. Bechtel not being present, we suggested that if he would give us a reasonable amount of time, we would take it up with Mr. Bechtel, and if that was satisfactory, he would hear from us later, within 10 days, something to that effect; but this suit was commenced before we saw Mr. Bechtel.

In offering the \$100, I didn't consider that it was worth \$100, but, as we were more or less busy, I didn't care to have any trouble over it. I didn't want any time wasted over it; and I merely offered \$100, because I thought it was worth more to me than to have any trouble. Later, after I had consulted an attorney in the matter, and been to some expense, I made the offer of \$50. That is more than what our profits showed.

I gave our towel supply department instructions to use the chain connected to the basket and not connected to the bottom of the shelf there.

In giving that instruction, I had in mind the Reid patent, which had been shown to us, their chains were assembled that way.

CROSS EXAMINATION.

I made this change under the advisement that that was the infringement; that it should not be connected to the bottom of that post.

At the time that the negotiation for a settlement was in progress, we had somewhere between 80 and 100.

Q. Do you know how many you have installed today?

A. Probably 150; maybe 175. Now, you mean similar to this device?

Q. Yes.

A. I have less of them now than I had then.

By detaching the end of the chain, I mean not fastening it to the same lock that locks that what you call, or what the patent described there as, that assembling member. We merely fasten it to something underneath that, like a basket, or even the wall, and it gives us the same effect as it does fastened to your lock.

I made no change in the device except to fasten the loose end of the chain to the basket.

Our device never was exactly the same as the Brown device. We discontinued making the fastening to the lock, and we used the same device in every other respect as we had used it before. If we took the basket off that chain, we could still use it just as we did in the first instance, that is, if we put back the link in the lock.

J. A. CLANCY, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

I am a resident of Portland, and I have charge of the deliveries for the Crystal Laundry Company.

I first heard of the Brown patent during the month of November, about November 3d, 1914.

We were notified about the patent, and we consulted Mr. Geisler, and he took the matter under advisement, and told us afterwards to change our device so it would not infringe on the Brown-Meyer patent; so we changed the device to the bottom of the basket.

I kept account of the work done during the period from November 3 to December 1, 1914. The figures of Mr. Allen are correct as to what the profit would amount to.

I made the change as Mr. Allen explained here.

After that change was made, I visited these buildings and places where these devices were established about once a week, and noticed particularly that the bottom end of the chain was disconnected from the bottom end of the crooked head post. All the chains were connected with the bottom of the basket.

In supplying the customers with a towel-rack, none of them required any particular device.

We used this device here.

We adopted this device because we had to have some device to comply with the law that went into effect on July 28, 1914; so we took the easiest method, and made the simplest device, as you see that our device is not an exact copy of the other device.

Before that we used a device without a chain; we had the rod device, and fastened it to the wall, and the towels hung on the rod.

During the middle part of the summer—I couldn't say, either June or July, 1914—we connected a chain to it. I had no knowledge at that time about the Brown device at all.

CROSS EXAMINATION.

We changed from the solid rod to the chain because it was more efficient.

I first heard of the plaintiff's patent on November 3, 1914.

On that day our firm received a letter from the Brown-Meyer Company, or your office, that they had received their patent on November 3d.

This notice came through our office.

RALPH P. MEYER, recalled for the plaintiff.

DIRECT EXAMINATION.

I heard the testimony of Mr. Allen, that, in the negotiation made respecting this patent, the Brown-Meyer Company attempted to dictate a rate on towels; that is not a fact, according to my recollection.

No such attempt was made.

No rate proposed or discussed, though we talked about the rate that individual towels ought to have; but there was no attempt to dictate a rate in the settlement; absolutely none.

AMOS BURG, recalled for the defendants.

DIRECT EXAMINATION.

I was present at this meeting or conference between Mr. Allen, Mr. Brown and Mr. Meyer.

I remember hearing the discussion of a rate; we discussed it somewhat from a business standpoint. Mr. Brown or Mr. Meyer said something about, as I understood, that they wanted a certain price providing that they would let us use those towel-racks.

CROSS EXAMINATION.

It was a certain price for the use of the towels.

Although I couldn't say just what the conversation that we did have.

I mean to state that a rate agreement on towels was made a condition of making a settlement with us on this infringement question.

I understood it that way.

C. F. BROWN, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

I am C. F. Brown, of the Brown-Meyer Company.

I heard the testimony given by Mr. Allen and Mr. Burg in regard to a conference at which I was present. To my recollection absolutely no towel rate was insisted upon as a condition precedent to making a settlement of this infringement.

CROSS EXAMINATION.

Nothing was said about the proper charges to make for towels.

Only as the laundrymen gathered together there, each one in his own interest, suggested what the price ought to be for a fair profit.

I couldn't say who made the suggestion as to what the rate should be. I don't know that there was any suggestion made as to what the rate should be. I don't remember whether there was or was not such a suggestion made.

REDIRECT EXAMINATION.

We did not demand any towel rate in order to settle.

*In the District Court of the United States for the
District of Oregon.*

Brown-Meyer Company, a Corporation,

(Title.)

OPINION OF TRIAL JUDGE.

Jos. L. Atkins for Plaintiff.

T. J. Geisler for Defendants.

Wolverton, District Judge:

The complainant is the owner of certain letters patent No. 1,115,895, issued to Charles F. Brown, November 3, 1914. It is only necessary to recite Claim 2, which is as follows:

"In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member co-operative therewith for the purpose specified, and means for detachably securing both ends of said retaining member together."

The supporting member consists of a shelf for holding folded towels, the towels being provided with gromets in the corner. The assembling member consists of a standard, curved at the upper end, passing at its lower end through the shelf. To the assembling member is attached a flexible retaining member, commonly a chain, one end being fixedly attached at the top or curved end of the assembling member, and the other end detachably secured to the lower end of the assembling member beneath the shelf, by use of an ordinary padlock. In use, a towel is taken from the shelf, slipped over the curve

of the standard or assembling member, and applied and then dropped, but is retained by the sag of the retaining member. The drawings show the sag to extend into a basket which serves as a depository of the soiled towels until removed.

The defendants are using a device in practically all respects, as to construction and operation, the same as plaintiff's, except that they attach the lower end of the retaining member or chain to the bottom of a basket inside, and not to the lower end of the assembling member, as does the plaintiff's contrivance.

Complainant sues, alleging infringement, and seeks an injunction and damages.

The primary question with which we have to deal is, does the defendants' device infringe plaintiff's patent?

The claims of the complainant's patent, it must be conceded, are subject to narrow construction, but so construed, I am convinced that the defendants are infringing.

It is the rule that to sustain the charge of infringement, the infringing device must be substantially identical with the one alleged to be infringed in the following particulars: First, in result attained; second, the means of attaining that result; and third, the manner in which the different parts operate and co-operate to produce the result. If the devices are substantially different in either of these respects, the charge of infringement is not sustained. *Electric Protection Co. v. American Bank Protection Co.*, 184 Fed. 916, 923.

But it has also been determined that if the defendant uses the plaintiff's patented invention, he infringes, what-

ever else he may use or whatever else he may have added to it. *Johnson v. Root*, Fed. Cases 7411.

So it is that an infringement takes place whenever a party avails himself of the invention of the patentee without such variation as will constitute a new discovery. *Carter v. Baker*, Fed. Cases 2472; *May v. County of Fond du Lac*, 27 Fed. 691.

Nor is infringement avoided because some colorable variation or expedient merely impairs or narrows the function and usefulness of the patented device. *Whitely v. Fadner*, 73 Fed. 486.

Now, applying these principles, I am not persuaded that the simple means of attaching the chain or retaining member to the bottom of the basket on the inside instead of at the foot of the assembling member, varies the device to such an extent as to add a new discovery, or even an old element, to the combination. The complainant's device is so constructed that the basket may be used in connection with it as a depository for the soiled towels. The defendants' device simply makes the basket a depository and merely changes the place of attachment for the lower end of the chain or retaining member. As an illustration, in the *Reid* patent, the lower end of the chain is attached to a wall, and yet the patent to complainant's assignor was granted notwithstanding the prior patent of *Reid*. Now suppose that the defendant had used the *Reid* patent and simply detached the chain from the wall and attached it to the bottom of the basket and used the basket as a depository for the towels, could any one say that such a change constituted an added

discovery or new element to the Reid patent? The Reid retaining member could have been used by elongating the chain so as to drop the sag into a basket and thereby bring the basket into play as a depository as the complainant uses a basket.

Thus I cannot conceive that the detachment from the lower end of the assembling member in the Brown patent and attaching it to the bottom of the basket or depository is the adding of a new element or discovery to the defendants' device, and am impressed that the alleged new device is merely colorable and without potent variation such as will avoid infringement.

The matter of treble recovery will be left for consideration on the accounting.

*In the District Court of the United States for the
District of Oregon.*

(Title)

No. 6719

INTERLOCUTORY DECREE FOR INJUNCTION AND ACCOUNTING.

At the November term of the District Court of the United States for the District of Oregon, held at the United States Court Room, in the City of Portland, on the first day of December, in the year of our Lord, One Thousand Nine Hundred and Fifteen.

Present: The Honorable Charles E. Wolverton,
District Judge.

This cause coming on to be heard at the November term of the said Court, in the year of our Lord, One Thousand Nine Hundred and Fifteen, and was argued by counsel; and thereupon, upon consideration thereof, it was ORDERED, ADJUDGED and DECREED as follows:

FIRST. That said Letters Patent No. 1,115,895, granted and issued on the 3d day of November, 1914, to Brown-Meyer Company, assignee of Charles F. Brown, being the Letters Patent referred to in the Bill of Complaint herein, are good and valid as respects all the claims thereof.

SECOND. That the said Charles F. Brown was the first true and original inventor of the invention and improvement as described in the claims in said Letters Patent, and the specification annexed thereto.

THIRD. That Brown-Meyer Company, the complainant in said Bill, is the lawful owner of said Letters Patent.

FOURTH. That the defendants, Broadway Towel Supply Company and Amos Burg, have infringed upon the claims of said Letters Patent, and upon the exclusive rights of the complainant under the same.

FIFTH. That the complainant do recover of the defendants the profits, gains, and advantages which the said defendants have derived, received or made by reason of said Letters Patent, and that the complainant do recover all damages resulting from said infringement.

SIXTH. And it is hereby further ORDERED,

ADJUDGED and **DECREED** that it be referred to Wallace McCamant, Master in Chancery of this Court, his experience in such matters being found by the Court a sufficient reason for his designation, to ascertain and take, and state, and report to the Court on account of the gains, profits and advantages which said defendants have received, or which have arisen, or accrued to them, or either of them from the said exclusive rights of the said complainant, by the use of the said invention, and the damages which the complainant has suffered by said infringement, and to assess such damages, and to report thereon with all convenient speed; and the directors of the defendant corporation, officers, attorneys, clerks, servants and workmen are ordered, directed and required to attend before said Master from time to time as required and to produce before him such books, papers, vouchers and documents, and to submit to such oral examinations as the Master may require or direct.

SEVENTH. It is further **ORDERED, ADJUDGED AND DECREED** that a perpetual injunction issue out of and under the seal of this Court, directed to the said defendants, to-wit: Broadway Towel Supply Company and Amos Burg, their associates, directors, officers, attorneys, clerks, agents, servants and workmen, enjoining and restraining them, and each of them from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used, in any manner, any articles, devices, apparatus or machines, containing, embodying, or employing the said invention described in the claims of said Letters Patent, Pursuant to the prayer of the said Bill of

Complaint, or from infringing upon, or violating the said Letters Patent in any way whatsoever.

EIGHTH. That the complainant do recover of the defendants its costs and disbursements in this suit to be taxed, and that the question of increase of damages and all further questions be reserved until the coming in of the Master's report.

CHARLES E. WOLVERTON,

Judge.

*In the District Court of the United States for the
District of Oregon.*

(Title)

No. 6719.

PETITION FOR LEAVE TO FILE SUPPLE-
MENTAL ANSWER AND TAKE
PROOFS THEREON.

TO THE HONORABLE, THE JUDGES OF
THE ABOVE NAMED DISTRICT COURT:

The petition of the Broadway Towel Supply Co.,
a co-partnership composed of Amos Burg, Charles
Burg, and W. C. Smith, respectfully shows:

That this suit was brought to recover for the alleged
infringement of letters patent of the United States
granted Charles F. Brown November 3, 1914, No.
1,115,895, on an application filed by said Brown August
13, 1913.

That the defendants answered, denying that the said
Brown was the first inventor of said invention, and also
denying that they infringed the same, except inadver-
tently during the month of November, 1914, as by ref-
erence to defendants' Answer will more fully appear.

That when defendants' Answer was filed they had
only such knowledge with respect to the state of the art
as was disclosed by the patents issued in the art.

That as defendants have only just ascertained, when
they filed their answer in this suit, there were pending in
the United States Patent Office two applications for

letters patent on behalf of two other inventors, whose inventions were and are prior to the alleged invention of Brown described in the patent in suit, and one of said inventions apparently dominating all types of towel racks of the kind in question.

That, therefore, said prior inventions, and the letters patent issued and to be issued thereon, have a material bearing on all issues involved in this cause and tend to show :

First—That said Brown is not the first inventor of his alleged invention, as claimed in his alleged letters patent.

Second—That if said letters patent be upheld at all, the claims thereof must have a very strict construction placed thereon, and when so construed the device used by defendants after December 1, 1914, would not infringe in any event.

Third—That if said Brown's alleged invention, and the letters patent thereon granted, are valid, the alleged invention of said Brown is itself dominated by the invention of and the letters patent issued thereon to Jacques Rousso, dated October 19, 1915, and No. 1,157,046, and granted on an application filed January 12, 1912, thus long prior to the application of said Brown, which culminated in the patent in suit.

That said letters patent of Rousso controlled the use of any individual towel racks of the kind and type in question in this suit, and therefore said letters patent control also the particular towel racks used by the de-

fendants, and thus, though assuming that the device used by the defendants even during the period from November 1st to December 1, 1914, did infringe upon the patent in suit, such device of defendants would also, and to a much greater extent, be dominated by and tributary to said Rousso patent, and consequently defendants would have to settle with the latter too, which fact is very material in all phases of this cause, and particularly also on any accounting for profits alleged to be due complainant.

That defendants only just discovered the Rousso patent. That said patent not being issued at the time said Brown application for patent for his alleged invention was pending, said Rousso patent was not cited. That defendants have ordered a certified copy of said Rousso patent, and also of the file wrapper thereof.

That there was further filed in the United States Patent Office, prior to the issuance of the patent in suit, an application on behalf of Henry A. Ammann, for an improvement in Towel Racks, the filing date thereof being September 29, 1914, and the Serial No. 864,049. That said application on behalf of said Henry A. Ammann is still pending and no inspection thereof could be obtained by the public, and no knowledge thereof was possessed by the defendants until the same was recently called to their attention by their attorney, T. J. Geisler, in this case, and defendants were permitted an inspection of said application of Ammann. That from an inspection of said application of Ammann it is apparent that the latter invented a towel rack which embodied the combination claimed in the patent in suit.

That attached hereto, as Exhibit A, is a photograph of the towel rack invented by said Ammann.

That defendants verily believe that said Ammann invented his said towel rack prior to the alleged invention by said Brown purported to be covered by the patent in suit, and defendants are in possession of the facts which, if proven, would show that said Ammann was the prior inventor as aforesaid.

That defendants learned of the facts concerning said Ammann invention just recently, in the following manner: That there is pending in this Court a suit by the above named complainants, Brown-Meyer Co. against the Crystal Laundry Co., which suit was tried at the same time as the case against these defendants, and involves fundamentally the same issues. That after a decree was entered in said case against the Crystal Laundry Co., the latter, being informed of the Ammann towel rack, obtained the license from said Ammann to use his towel rack in its business, and purchased some of said racks from Ammann. That thereupon the complainants claimed that the Ammann towel rack which said Crystal Laundry Co. was using was also an infringement on the patent in suit. That thereupon said Crystal Laundry Co. immediately communicated said contention of complainants to Ammann, and said Ammann then informed the Crystal Laundry Co. that he himself invented his own wire towel rack prior to the alleged invention of said Brown of his improvement. That our Attorney in this cause is also the Attorney for said Crystal Laundry Co., and thus became apprised of said facts concerning the Ammann towel rack.

That immediately after defendants were informed of the matters relating to the Amman towel rack, they investigated such matters, and from such investigation believe that the claims of said Ammann, as to priority over said Brown, are fully substantiated by the record of his application, and the facts which defendants will be able to prove through said Ammann, and other witnesses.

That as above mentioned, said Ammann application has not yet been completed, but defendants, by permission of said Ammann, have ordered a certified copy of the file wrapper thereof for use in this cause.

That since the complainants claimed that the Ammann towel rack is an infringement on the patent in suit, because subsequent to the invention thereby protected, proof of the fact that the Ammann invention was prior to the Brown invention, covered by the patent in suit, would tend to show that the Brown invention was anticipated.

That proof of the facts relating to said invention of said Rousso and said Ammann will furthermore show that whatever said Brown did invent it is but a very small portion of any of the towel racks used by the defendants even during said period from November 1, 1914, to December 1, 1914, and was not infringed by any device used by defendants since December 1, 1914.

Therefore defendants pray for leave to file a supplemental answer herein, alleging the facts above narrated concerning said Rousso patent and said Ammann application, and the inventions thereby covered.

That the proposed supplemental answer of these defendants is hereto attached, duly verified, and defendants pray that the same may be filed in this cause.

Defendants further pray that they be permitted to prove the facts above averred, and by said proposed supplemental answer alleged, concerning said Rouso patent and said Ammann application, and the inventions thereby covered.

Defendants further pray that this cause be re-heard on said further proofs of defendants, after the same have been introduced.

And defendants further pray for such other and further relief in the premises as to the Court may seem meet.

Dated April 5, 1916.

BROADWAY TOWEL SUPPLY CO.,

By Amos Burg,

A Member of the Firm.

AMOS BURG,

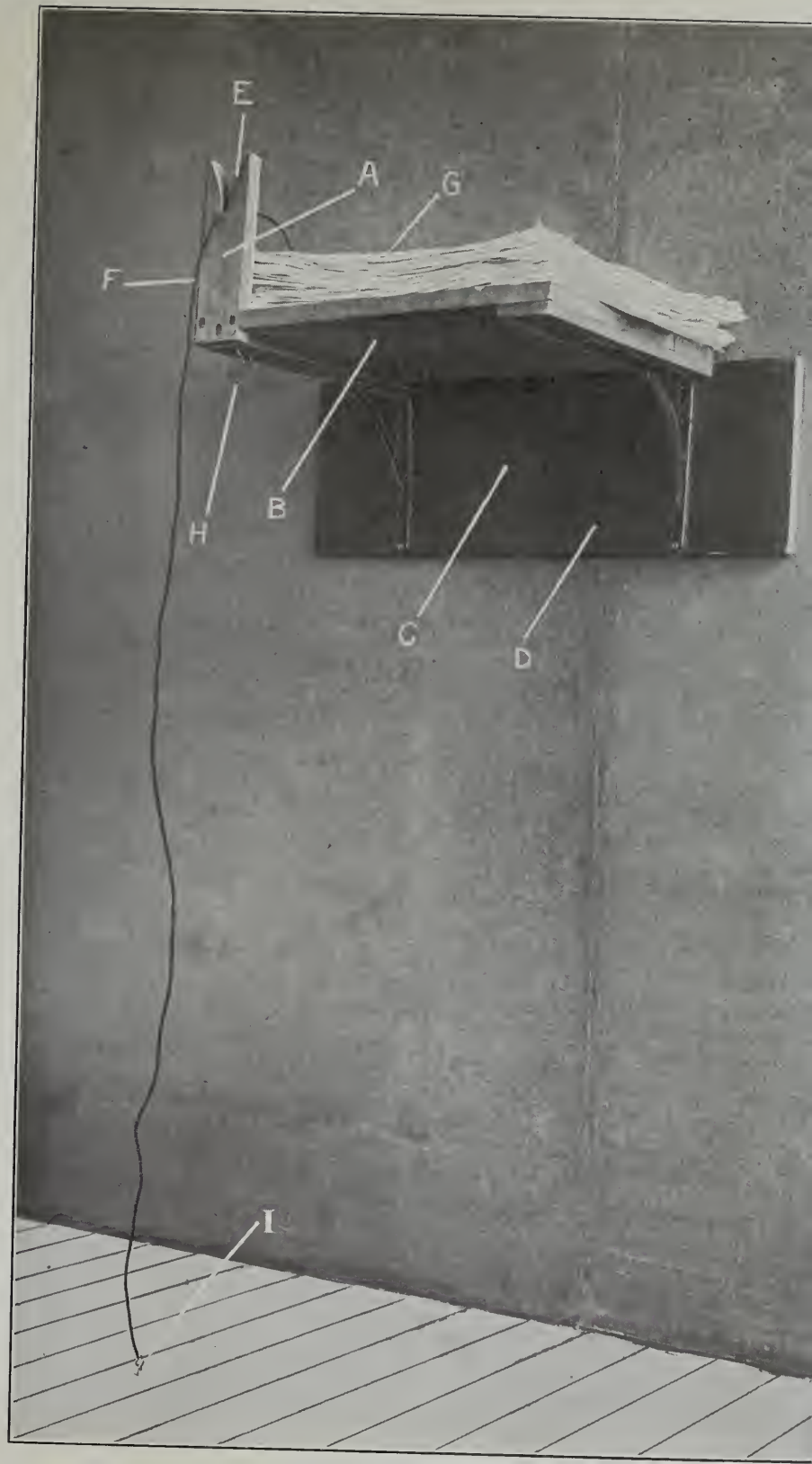
Defendants.

Here follows verification.

I, Theodore J. Geisler, of counsel for the above named defendants, hereby certify that I have read the foregoing petition, and I verily believe the same well founded in fact and law as therein represented, and that the defendants are entitled to the relief therein prayed for.

T. J. GEISLER,

Of Counsel for Defendants.



No. 6719.

(Title)

**PROPOSED SUPPLEMENTAL ANSWER.
TO THE HONORABLE, THE JUDGES OF
THE ABOVE NAMED DISTRICT COURT:**

And now comes the above named defendants, Broadway Towel Supply Company, a co-partnership, and Amos Burg, and by leave of Court make supplemental answer to the bill of complaint herein as follows:

That as set forth in the original answer, this suit was brought to recover for the alleged infringement of the alleged letters patent of the United States granted to Charles F. Brown November 3, 1914, No. 1,115,895, on an application filed by said Brown August 13, 1913.

That in the original answer defendants denied that said Brown was the original and first inventor of said invention, and also denied that they infringed the said letters patent purported to be granted therefor, except inadvertently during the month of November, 1914, all of which by reference to defendants' said answer will more fully appear.

That, as defendants have ascertained since the filing of their said original answer, there were pending in the United States Patent Office two applications for letters patent on behalf of two other inventors for improvement in Towel Racks, whose inventions were and are prior to the alleged invention of Brown purported to be patented

in the patent in suit. That one of such applications was filed by Jacques Rousso January 12, 1912, and matured in letters patent dated October 19, 1915, and No. 1,157,046, and that the other of said applications was filed by Henry A. Ammann, of Spokane, Washington, on the 29th day of September, 1914, under Serial No. 864,059, and thus was pending when the patent in suit issued, and that said application of said Ammann is still pending in the United States Patent Office, but defendants, by permission of said Ammann, have had an inspection of his said application.

That defendants are further informed by said Henry A. Ammann, and verily believe, that the invention by him in his said application described was invented by him prior to the alleged invention by complainant's patentee, said Charles F. Brown, of the alleged improvement in Towel Racks which the patent in suit purports to cover.

And defendants further aver that they are now informed and verily believe that said Charles F. Brown, complainant's patentee, was not the original and first inventor or discoverer of the combination set forth in the claims in the patent in suit, or of any of the material or substantial parts of said combinations, or any other improvement in Towel Racks purported to be covered by the patent in suit, but that said combinations, and the material and substantial parts thereof, and said alleged improvement by said Brown was known in the prior state of the art as disclosed by the patent specified in the original answer of defendants, and as further and particularly disclosed by the patent to Jacques Rousso, the patent to Guy Reid, set forth in the original answer

in this suit, and by said application for patent of said Henry A. Ammann, of Spokane, Washington; and was furthermore known and used by said Ammann prior to the alleged invention thereof by said Brown; and that therefore the patent in suit always has been and still is wholly null and void.

And these defendants further aver that if there is any improvement in Towel Racks invented by said Brown and covered by said alleged patent in suit, such alleged improvement was and is of the most specific and limited character, especially in view of the matters herein set forth, and therefore must be construed accordingly, in order not to encroach upon the rights vested in prior inventors, and their assignees and licenses, and the general public at the time said Brown invented his alleged improvement, and which rights still are so vested. And furthermore, whatever improvements in towel racks may have been invented by said Brown, or which the patent in suit purports to cover, is itself dominated by the aforesaid patent of Jacques Rouso, since the issuance of the latter, and therefore, if defendants are to be held to account to the complainants herein, they should have their accountability determined and limited with due regard to said patent issued to said Jacques Rouso and the obligations of defendants thereunder.

WHEREFORE these defendants pray that they be permitted to make proof of the matters in this supplemental answer alleged; that they have the relief prayed for in their original answer, and also such other

and further relief in the premises as to the Court may seem meet and in accordance with equity.

BROADWAY TOWEL SUPPLY CO.,

By Amos Burg,

A Member of the Firm.

AMOS BURG,

Defendants.

T. J. GEISLER,

Solicitor and of Counsel for Defendants.

Here follows verification.

In the District Court of the United States for the District of Oregon.

(Title)

No. 6719.

**ORDER DENYING DEFENDANTS LEAVE
TO FILE PROPOSED SUPPLEMENTAL ANSWER.**

The petition of the above named defendants, verified April 4, 1916, praying for an order granting them leave, under rule 34 of the Equity Rules, to file a supplemental answer alleging certain facts claimed by defendants to be material to this cause, and set forth in said petition and the proposed supplemental answer therewith filed, and permitting defendants to prove the facts alleged by such proposed supplemental answer, and that defendants have also such other and further relief in the premises as to the court may seem just, coming on to be heard before the court at this time, complainants appearing by counsel but not having filed any affidavits or other pa-

pers in opposition to said petition; and thereupon, after hearing counsel for the respective parties, and upon consideration thereof, it was

ORDERED that said petition be and the same is hereby in all respects overruled and denied.

Dated April 17, 1916.

CHAS. E. WOLVERTON,
Judge.

In the District Court of the United States for the District of Oregon.

(Title)

No. 6719.

MASTER'S REPORT.

Filed Dec. 21, 1916.

The above entitled cause having been referred to me as Master by order made by the United States District Court for the District of Oregon, on the 19th day of February, 1916, with instructions to examine the record and the evidence now on file or thereafter taken, and ascertain, take, state and report to the Court an account of the gains, profits and advantages which defendants have received or which have arisen or accrued to them, or either of them from the said exclusive rights of the complainant by the use of the said invention, and the damages which the complainant has suffered by said infringement.

I BEG LEAVE TO REPORT.

That the respective parties appeared before me by their counsel, Joseph L. Atkins, counsel for complainant, and T. J. Geisler, counsel for defendants.

The testimony offered by the parties was taken before me and the same, and the exhibits referred to in the testimony are annexed hereto and returned into Court with this report.

The complainant duly waived any claim for profits and the issue to be passed upon by me is what damages have been sustained by the complainant by reason of the infringement by defendants of the letters patent numbered 1,115,895, granted and issued on the 3rd day of November, 1914, to complainant, assignee of Charles F. Brown.

It appears during the year 1913, and at all times since complainant and defendant Broadway Towel Supply Company, were, and now are engaged in the laundry business in the City of Portland and County of Multnomah, State of Oregon, and it was, and is a part of the laundry business as conducted by said parties to supply and furnish to customers, for use, individual towels owned by the parties at and for an agreed price per hundred towels.

The City of Portland in August, 1913, required individual towel service, as a condition of making a contract with complainant. An ordinance was passed by the City of Portland in July, 1914, making it an offense to furnish in a public building, a towel intended, or available for common use by more than one person, and not

being laundered after such use. These circumstances created a local demand for individual towels, and complainant about August, 1913, installed in the City Hall, Portland, Oregon, a towel rack designed to render the use of individual towels convenient, and protect the laundry company from losses by theft. Complainant continued to use this rack and the letters patent were issued to it November 3, 1914.

In the year 1913, defendants became familiar with the rack used by complainant, and itself constructed and installed one in all respects like it. This practice defendants continued until after the letters patent were issued to complainant. After the patent issued, defendants attempted by making some changes in construction, to create a towel rack that would not be covered by complainants patent. The District Court held the towel rack produced by the changes thus made by defendants was an infringement of the letters patent issued to complainant. Defendant in this hearing seeks to review the decision of the District Court, and insists the master should determine whether or not the changes were in fact an infringement, and also what portion of the towel rack is covered and protected by the letters patent. The Master believes, and holds the decision of the District Court is the law of the case and conclusive upon the Master, and the use of the towel rack constructed and used by Broadway Towel Supply Company, defendants, since November 3, 1914, and until February 28, 1916, is an infringement of the right of complainant, and the latter is entitled to recover therefor its damages without any attempt by the Master to segregate or apportion

the amount of such damages resulting from the use of any particular portion or element of the towel rack protected by the letters patent.

Whether the action of defendant in attempting to avoid infringement by the changes it made in the rack is an incident commonly found in infringement cases, is immaterial, since the validity of the changes has been adjudicated.

I.

The particular towel rack covered and protected by the letters patent was not manufactured and sold by either complainant or defendant, and therefore there is no account of profits made by defendants or lost by complainant.

II.

Complainant has not established any license fee for the use by others of the patented article, and the proof does not show the value of such a license.

III.

The evidence shows in actual practice the towel rack in question was a device to permit the ordinary use of individual towels and at the same time protect the laundry from losses by theft.

The necessity for such a towel rack arose when City ordinance, and the demands of customers required that instead of roller or other towels, individual towels must be supplied. Under the circumstances thus disclosed it became and was a substantial advantage to possess and install a rack that would accommodate users and pro-

fect the laundry owner. The owner could supply free individual towels without any rack and bear the loss sustained by theft of towels. The evidence shows such loss would be so great, no one could afford to carry on the business by furnishing free loose independent towels. The laundry owner was therefore confronted with the alternative of either supplying a satisfactory towel rack or retiring from the business of supplying towels for general use.

Complainant furnished and used its own rack. Defendants furnished and used the same kind of rack or one so similar the court found there was no substantial difference between it and that of complainant. Complainant and defendant at different times charged and received various prices for towels supplied. These prices ranged from 60 cents per hundred, the highest, to less than 25 cents, but it seems to be fairly established by the evidence that in a general way the price was made at 30 cents per hundred. At this price the profit received was about 25 per cent, or one quarter of the total price paid by customers.

During the time covered by the investigation, defendant Broadway Towel Supply Company, supplied 446,858 towels, and in so doing used the racks in question. Defendants secured a contract from Multnomah County, by underbidding complainant and using a towel rack identical with that of complainant in the performance of the contract. This incident happened before letters patent issued, but the arrangement continued after November 3, 1914, and until the service of the injunction in the present case.

The Broadway Towel Supply Company furnished under the circumstances already detailed the number of towels stated, viz., 446,858, and the total receipts therefor was thirteen Hundred Forty and 50/100 Dollars (\$1340.50). Of this amount the proof shows 25 per cent, or one-quarter was profit, or Three Hundred and Thirty-five Dollars (\$335).

Complainant claims a considerable amount of damages on account of a reduction in price from 50 cents per hundred to 30 cents per hundred. It does not appear to the Master that this reduction is shown by the testimony in the case to have been brought about entirely by the fact that the defendant Broadway Towel Supply Company after the patent was issued to complainant, nor does it appear from the testimony what proportion or amount of the reduction in price was occasioned after the patent was issued by defendant Broadway Towel Supply Company using a rack which was an infringement of said patent, and this claim is disallowed.

Complainant also claims damages to the amount of one-third of the loss of profits on 2,900,000 towels, the amount of complainant's business from November 3, 1914, to February 18, 1916, the defendant Broadway Towel Supply Company, being one of some three laundries engaged in the business at Portland and vicinity.

The Master for the reasons already stated in connection with the uncertainty of the proof as to all the causes for a price reduction and for the further reason that the evidence shows the actual amount of towels sup-

plied by defendant Broadway Towel Supply Company, for which it may be liable, this claim is disallowed.

I find that the Broadway Towel Supply Company at all the times it used the rack which was an infringement of the rights of the complainant, knew the rack which is now covered by the letters patent, was the property and design of the complainant, and deliberately and purposely used the same for its own purposes, and with the purpose and intent to benefit itself by such use and in total disregard of the rights of complainant, and I find the same facts as against the defendant Amos Burg.

From the foregoing facts I find as a conclusion of law, that the complainant is entitled to recover of defendants Broadway Towel Supply Company and Amos Burg, the sum of Three Hundred and Thirty-five Dollars (\$335.00) together with costs and disbursements, and recommend that the Court award triple damages.

JOHN B. CLELAND,

Master.

No. 6719.

(Title)

**STIPULATED CONDENSED STATEMENT
OF TESTIMONY IN THIS CASE, ON AC-
COUNTING BEFORE MASTER AFTER
INTERLOCUTORY DECREE.**

Suit is for infringement of United States Letters Patent No. 1,115,897, issued on November 3, 1914, to plaintiff, as assignee of Charles F. Brown, on application filed August 13, 1913.

Accounting was had before John B. Cleland, Esq., a special master, at Portland, Oregon, beginning April 26, 1916; the parties appearing by the same counsel as on the trial of this cause.

It was stipulated that plaintiff was prepared and ready to supply all demands for individual towel service under the patent in the city of Portland which was or might have been made on it.

AMOS BURG, a defendant called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ATKINS:

I am one of the defendants in this case.

I am the manager of the defendant, Broadway Towel Supply Company, now a corporation, incorporated since this suit was brought.

I have made an examination of the records to determine the number of towels furnished to customers on the racks held by the Court to be covered by the patent in suit from the date of the patent until the injunction was served in this case, and furnish a statement of the same.

MR. ATKINS: Statement headed "Account of Broadway Towel Supply Co." referred to by the witness, offered in evidence, and the stenographer is requested to mark it "Complainant's Exhibit AA."

Statement marked COMPLAINANT'S EXHIBIT AA.

ACCOUNT OF BROADWAY TOWEL SUPPLY CO.

Ainsworth Bldg.@	.30c	32,928
Behnke Walker .....	.30c	35,040
Caswell .....	.30c	16,890
Court House .....	.28c	225,832
Equitable .....	.35c	17,145
Hamilton Pool Hall ...	.30c	575
Henry Bldg. ....	.35c for first	
	1000 then 30c	34,726
Lowengart .....	.30c	2,500
Moose Lodge .....	.30c	15,700
Powers & Anderson....	.30c	9,900
Sherlock Bldg. ....	.35c for first	
	1000 then 30c	84,720
Van Schuyvers .....	.30c	10,850
		<hr/> 486,858
Deduction for Court House.....		40,000
		<hr/>
Actual number		446,858

Since February 28, 1916, we have two different towel racks. One of them is the Rouso patent and the other one is the Michaelson—Ed Michaelson's company is at Chicago.

Those are the only ones which we have used since February 28, 1916, to the best of my knowledge.

Mr. Smith is the one that has charge of that and he tells me that he has not.

Referring to Complainant's Exhibit AA, the rate per hundred towels to different customers varies. The cause for such variation in price is, the more towels a person uses the better prices, as a rule, he demands.

Our largest customer is the Court House. They get a rate of twenty-eight cents for that reason. Thirty cents per hundred is the prevailing rate, and we figure up or down from that as a basis.

Our profit per hundred on towels supplied on the racks in question I can only approximate. It may run three per cent net.

The business of the Broadway Towel Supply Company is an independent business, but we have no separate plant or establishment. We have our work done at the State Laundry. We pay the State Laundry eighteen cents a hundred for laundering towels. That includes only laundering. It does not include delivery.

I am superintendent of the State Laundry.

The State Laundry Company is a corporation. I am a stockholder in that corporation also.

And I am a stockholder in the Broadway Towel Supply Co. I am a director and the present of the Broadway Towel Supply Co.

I am inside superintendent of State Laundry.

I hold no office in the State Laundry Co.

The capital stock of the State Laundry Co. is twenty-five thousand, I think. I own forty-two shares and a half, I think.

The capital stock of the Broadway Towel Supply Co. is Five Thousand, but only twenty-six hundred taken out. I own nineteen shares, at one hundred dollars each. Witness on recall testified that he had only \$500.00 invested in the Broadway Towel Supply Co., and upon cross examination that the said company is in effect the individual towel distributing department of the State Laundry.

The rate of eighteen cents a hundred for the laundering of our towels is arrived at by agreement. The agreement was made by Mr. Van Zante, the manager, and myself. I made no effort at the time of fixing that rate to determine whether I could get a cheaper rate from another laundry company. At the same time it is a rate that is as reasonable as there is any work done of that nature in the city. If a cheaper rate were available, it would be business to give the laundering of individual towels to others.

The first form of individual rack used by us in this individual towel business was a rack substantially like the Brown rack.

Mr. Smith was responsible for the adoption of the original rack, in so far as he came in and told me that he thought he could fix up a rack that would be satisfactory, I said "all right," not knowing anything about the patent proposition.

I did not see the rack which was first installed in the Court House before I took the contract to supply the Court House.

We pay eighteen cents a hundred for the laundering of the individual towels, and any profit we make had to come out of the remaining twelve cents of the thirty cents. The expenses deducted from that twelve cents, as a basis in arriving at our profit, which I have stated approximately to be three per cent, is delivery and depreciation in the towels, stationery and other items. Cannot state what the expenses are but will look them up and furnish them.

I am acquainted with the suit brought by the complainants in this case against the Crystal Laundry Co. and Percy G. Allen. I have no agreement with them in regard to that litigation, except that we should go together, kind of, on account of expense that may occur; just a wordly agreement between us that we would stand our proportion of the expenses.

I am aware that notice of appeal has been filed in that suit. I am the surety on the appeal bond.

The verbal agreement which I have mentioned does not extend to sharing the expense of that appeal. The proportion of expense which we were to bear was up to the date the injunction was served. We are not obli-

gated to pay any part of the expense since that injunction was served.

CROSS EXAMINATION BY MR. GEISLER.

This agreement entered into between the Broadway Towel Supply Co. and the State Laundry Co. by which the rate of eighteen cents per hundred was fixed for washing and ironing the towels was in June, 1914, I think.

* * * * *

AMOS BURG, called as a witness by the defendant, having been previously sworn, testified as follows:
DIRECT EXAMINATION BY MR. GEISLER.

MR. ATKINS: Are you ready with your statement, Mr. Burg?

MR. GEISLER: To get that I will ask the witness some questions, so I will get it in the form of a record.

MR. ATKINS: What questions are those?

MR. GEISLER: So as to get it down, we will make the statement right in front of the Master and the stenographer can take it down.

MR. ATKINS: You mean to say that you want to call him as your own witness?

MR. GEISLER: For the purpose of this statement, yes, sure.

MR. ATKINS: I understood he was to continue his direct examination.

MR. GEISLER: Well, you asked for certain in-

formation and I am going to help him make up a statement right in the presence of the Master and yourself.

MR. ATKINS: Have him sworn as your witness.

MR. GEISLER: He is sworn.

MR. ATKINS: I mean, have him sworn as your witness in this matter.

MR. GEISLER: And you can cross examine.

We employ 7700 towels in our service, approximately. They cost us about five cents, so that would make the cost of those towels \$385.00; figuring at thirty-three and a third per cent depreciation would make \$128.33, or at the rate of \$1.66 per hundred depreciation. Of course that is all a matter of computation.

Upon cross examination witness stated he has no special knowledge of the records of his company. Keeps no separate accounts of the towels used, as involved in this suit. Does not know how many horses and wagons it would take to handle the towel business of the patent in suit. Defendant corporation has its quarters in the State Laundry. Amount of expense of individual towel business involved in suit is just an estimate. Estimates an expense of \$15.00 per month for upkeep of two wagons, but this is just guess work.

W. C. H. SMITH, a witness called on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ATKINS.

I am of lawful age.

I am a stockholder of the Broadway Towel Supply Company, also acting as secretary.

My duties are, attending to the outside work of the route and towel business; taking care of the amount of towels delivered and the amount of towels that are brought in and a correct count of them.

I am acquainted with Complainant's Exhibit AA.

We were using less than thirty of the individual towelracks held by the Court to be included in the patent in suit, when the injunction was served in this case.

I got them made by a carpenter, and never had more than thirty.

I ordered them at different times. I had a carpenter named Will Steel make them, and Mr. J. Walsh is the man who made the rod and chains.

There was an individual towel rack used in the Court House before I put one in. I saw it before I adopted ours, and made ours similar to it. At the time I saw that rack there, there was no mark of patent applied for on it, I had looked it all over before I ever made them.

The number of towels which the Broadway Towel Supply Co. dispensed to its customers in the period of November 1st to December 1st, 1914, was 29,176.

RALPH B. MEYER, called as a witness on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ATKINS.

I am the Meyer of the Brown-Meyer Company, the complainant in this case.

The infringements in the city of Portland of the patent in suit, so far as I know, are made by the Crystal

Laundry and the Broadway Towel Supply, and the Palace Laundry Company.

With the exception of these three companies, there would be no infringement in Portland of the patent in suit, I believe.

Our company made a profit of 25% in the individual towel service supply under the patent in suit.

Our company commenced the individual towel service about July or August, 1913. The occasion for making use of this device in question was an ordinance passed by the City of Portland to discontinue the common use of a roller towel.

We installed this service in the Court House in Portland. I think it was in 1913.

We continued to supply that service at the Court House for nearly a year and a half.

The occasion of discontinuing the service was the cutting of the price by the Broadway Towel Supply.

The price originally started on, I think, was sixty cents, and then the price was voluntarily lowered by us because they didn't know what the amount of usage they were going to have, and when we saw the towel expense was so high we voluntarily cut the price and it got down to a sort of a uniform price of thirty cents. The price was cut down below that, and we lost the contract on the cutting of the price.

The Broadway Towel Supply took the contract away from us before November 1, 1914.

The rack used by the Broadway Towel Supply Co.

when they took this contract away from us was the identical rack that we used.

The Broadway Towel Supply Company appropriated our rack and cut the price in order to get the business from the Court House.

The ordinance of the City of Portland to which I have referred required the use of individual towels in place of one towel for common use.

We adopted a rack for holding the individual towels assembled instead of using loose individual towels, to keep them from being stolen. Without some means of securing them against theft I think the public would have stolen fifty per cent of them, or more. That would have been practically prohibitive of the business.

We don't make any charge for this towel rack which we supply with our individual towels.

Our customers do not demand as a condition for our delivering our individual towels that we supply them with any particular kind of fixture. The towel fixture is exclusively for our own benefit in this, that it prevents the carrying away of towels. It would be just as handy to have a towel loose as to have it on a string, the customers are interested simply in the delivery of clean individual towels and the price which you are going to charge for them. As a general rule we have been asked to state what kind of rack we had for the towels.

I am not selling towel racks.

I am prepared to sell towel racks upon demand.

As a matter of fact, I offered to supply the defendant in this case with the towel racks.

These towel racks that we supply for individual towel service are such as comply with the ordinance of the City of Portland. And I found them generally acceptable to customers to whom we supply them.

Complainant's Exhibit BB showed statement of complainant's individual towel service business, including the following:

Number of towels in service....	18,000	
Cost at 4c each.....		\$720.00
33 1/3% yearly depreciation.....		240.00
		<hr/>
Depreciation per week		\$4.60
No. of holder racks in service..	181	
Cost at \$2.00 each		362.00
10% yearly depreciation		36.00
		<hr/>
Depreciation per week .....		.70

The remainder of this statement is omitted because immaterial to the question to be presented on appeal.

GARFIELD W. HAWN, called as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GEISLER.

I am superintendent of drivers and assistant manager of the outside of our laundry—Portland Laundry Company.

We use towel fixtures ourselves. We make no charge to our customers.

The competition in general with respect to individual towels is not based upon any particular fixture, only

upon the rental price of towels. The fixture is at the option of the man that rents them; it is for his own protection to prevent the loss of towels—some device of locking them in place.

Now we figure on our stock of towels investment thirty per cent depreciation—that would amount to in cents three cents per hundred towels.

On cross examination witness stated that 33% depreciation is on towel stock together with depreciation on overhead, that is, machinery, horses and wagons.

W. C. H. SMITH, recalled as a witness in behalf of the defendants, having been previously sworn, testified as follows:

DIRECT EXAMINATION BY MR. GEISLER.

Competition fixes price of towels. The fixture don't amount to anything, all they want is the towels, I have towels out just laying on the shelf, without any fastenings.

The object of using the fixture is to save us from losing towels, we lost quite a few towels and you have to have some kind of a way to keep them.

There are quite a number of different kinds of fixtures in use in the city of Portland at the present time.

We use a kind of red mahogany case, the towels are fastened to a rod and a chain and lock inside of a case.

We do not use any fixture now which embodies a chain and a shelf.

At the present time I am just using a shelf and the towels are loose on that; I also have some cases, as I stated, those cabinet cases.

During the month of November, 1914, I was using a shelf with a rod, fastened with a lock, similar to the device described in the Brown patent.

On the first of December, 1914, I discontinued the chain from the lock and had fastened to the basket with a ring inside of the wire basket. I believed that in making that change I was no longer infringing on the Brown patent.

CROSS EXAMINATION.

Questions by Mr. Atkins:

Q. What do horse shoes cost around?

A. What is that?

Q. What do the horse shoes cost around?

A. From four and a half to five dollars.

Q. The shoes?

A. Yes, sir, rubber pads.

Q. Do you use rubber pads exclusively?

A. What is that?

Q. Do you use rubber pads all the time.

A. Yes sir.

Q. Nothing but rubber pads?

A. Yes sir.

Q. Do you have the keeping of these accounts for repairs of wagons?

A. No, I get the bills, and sometimes I pay cash, and then most of the bills I turn over to Mr. Burg. I really take care of the business on the outside.

Q. Have you any account of expenditures for wagon upkeep during the first six months of 1915?

A. Have I?

Q. Yes.

A. No, Mr.— I don't know, we have had bills every month, but Mr. Burg keeps those bills; I don't know whether he keeps them, sometimes we keep them and sometimes we don't keep them, but I could bring in a bill to let you—

Q. You keep no account of that?

A. No, sir, not me. I have the work done and have it charged up.

Q. And you have no record of that that would show any such expenditure of fifteen dollars a month for wagon repair?

A. Well, that is usually the price, for any person with any sense should know that keeping a wagon for a year, you have to repair a wagon.

Q. I am asking about facts, I am not asking for—

A. I am just telling you that.

Q. There is no use of filling this record with a lot of talk what might be done, we want to know what has been done.

A. You are asking the questions of me.

Q. I am asking the question as to what money has been paid out; if you don't know, answer it and put it that way.

A. I told you it averaged fifteen dollars a month.

Q. Have you any record to show that you paid out that much money?

A. Have I got any record?

Q. Yes.

A. No.

Q. You don't know—you swear that you paid out fifteen dollars a month?

A. I didn't say I would swear.

Q. What?

A. I didn't say I would swear to it.

Q. No, you are just talking.

A. Yes.

All exhibits introduced before the Court on the trial were also considered before the Master.

It was stipulated that after December 1, 1914, to date of hearing before Master, the device used by defendant laundry company was used only by having the lower end of the chain hanging down and fastened to the bottom of the basket, and that the lower end of the chain was not fastened to the lower end of the assembling member, referring to that part which in plaintiff's patent is designated by 4.

Defendants' counsel proposed to show by the letters patent granted to Jacques Rousso October 19, 1915, and numbered 1,157,046, a duly certified copy of which letters patent were offered as an exhibit, that such patent shows the prior state of the art bearing directly on towel cabinets or fixtures of the kind here in controversy, and that the Rousso patent dominates the use of all fixtures of that kind, and all users of fixtures of that kind

are on the record of this patent liable to Rousso for infringement; and that said patent would also show what it is that the inventor of the patent in suit did invent, in order that the Master may, with such evidence before him, arrive at proper deductions for determining what, if anything, should be paid by the defendants to the plaintiff in this suit.

Plaintiff's counsel objected to the introduction of the patent as showing an alleged prior state of the art for the reason that the patent is subsequent to the Brown patent in suit, and that it issued prior to the trial of this case before Judge Wolverton, who upon motion denied consideration of this patent which defendants' counsel offered.

Defendants' counsel further offered a certified copy of the file wrapper of the application made by said Jacques Rousso, showing that the application for said Rousso's patent was filed on January 12, 1912, and thus over a year prior to the application for patent on behalf of Brown, the inventor of the alleged patent in suit.

Plaintiff's counsel objected to the introduction of the last offer upon the same ground as the previous offer.

Defendants' counsel further offered to show by the testimony of the witness William C. Schmitt, a mechanical and civil engineer and expert in patent matters, competent to read patent documents, that he has examined the Rousso patent referred to and that such patent is basic on the particular kind of fixture involved,

and controls all fixtures of the kind here in consideration and therefore all fixtures of that kind which are used would be tributary also to the Rousso patent.

Plaintiff's counsel objected to the testimony of the witness along the line indicated upon the ground that it is incompetent. Questions of infringement are matters for the Court and it has been uniformly held that they are not proper matters for expert testimony.

Defendants' counsel stated that the evidence offered was not with regard to defining this patent but merely defining the mechanical construction of the device thereby patented and explaining the bearing of such device in the patent granted thereon, for the purpose of facilitating and enabling the Master to make correct deductions in the premises in the giving of his judgment in this case.

THE MASTER, after hearing the argument of counsel, sustained the objections of plaintiff.

Defendants' counsel further called the special attention of the Master to the fact that the object in offering said Rousso patent and showing that upon the record thereof it is superior to and prior to the patent here in suit, is that the defendants have an existing obligation under such patent to the owners thereof and such objection should be taken into account in making any award, if any to be made, to the plaintiff as against the defendants in this case.

Plaintiff's counsel stated that it is so understood in the previous presentation of the points, and no further objection is necessary.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

It is hereby stipulated that the foregoing is a true, complete and properly prepared statement of the testimony and proceedings before the Master on accounting in the above entitled cause, and that the same may be approved by the Court accordingly.

Dated March 24, 1917.

JOSEPH L. ATKINS,
of Counsel for Plaintiff-Appellee.

T. J. GEISLER,
of Counsel for Defendants-Appellants.

The foregoing condensed statement of the testimony and proceedings before the Master on accounting in this cause is hereby approved, on the stipulation of the parties.

Dated March 27, 1917.

CHARLES E. WOLVERTON,
District Judge.

(Title)

No. 6719.

**EXCEPTIONS OF DEFENDANT BROAD-
WAY TOWEL SUPPLY CO. TO
MASTER'S REPORT.**

The defendants Broadway Towel Supply Company, a corporation, and Amos Burg, hereby excepts to the report of the Master on accounting filed December 21, 1916, herein, in the following particulars:

I.

(a) To the finding as a conclusion of law in said Report (page 67, last paragraph) that the complainant is entitled to recover of this defendant the sum of \$335.00, for the reason that said finding is erroneous since unsupported by any finding of fact or evidence in the case.

(b) Said finding is also erroneous for the reason that the evidence shows, as reported by the Master (page 64, I, II of his report) that: "The particular towel rack covered and protected by the letters patent was not manufactured or sold by either complaint or defendant, and therefore there is no account of the profits made by defendant, or loss by complainant. Complainant has not established any license fee for the use by others of the patented article, and the proof does not show the value of such a license." That the only damage which the complainant claims in this case is the bene-

fits derived by defendants in this, that the towel rack used by defendant, and adjudged to be covered by complainant's patent, protected this defendant corporation against loss of towels by theft. That said sum of \$335.00 awarded by the Master to complainant, however, was the entire profit by this defendant on all its towels in service (Master's report, page 66, lines 1 to 7). Therefore, in awarding said \$335.00 the Master obviously assumed that this defendant would have lost so many towels if it had not used said towel rack and that it would have lost all its profits, which assumption is wholly unsupported by any evidence. That the evidence shows (Masters' report ib.) that this defendant had 446,858 towels in service. That the only testimony as to the probable amount of towels which defendant might have lost if he had not used said towel rack was the testimony of Meyers, of complainant corporation, who testified (Testimony before Master, page 77) :

"Q. What would have been the result had you used individual towels without some means of securing them against theft?"

"A. Oh, I think they would have stolen 50% or more." Which, as evident, was a mere matter of opinion.

The said 446,858 towels used by this defendant in its towel service to customers represented a total investment of \$385.00 (Testimony before Master, p. 74), and if defendant had lost half of their towels they would have sustained a loss of one-half of said \$385, and thus only \$192.50. 77

(c) Said finding is further erroneous because said \$335.00 awarded complainant is greatly in excess of any saving of this defendant due to the patented features of said towel rack, for the towel rack used by this defendant represents in its greatest part merely the towel rack patented to Guy Reid July 15, 1913, No. 1,067,622 (transcript of testimony on trial, pages 21 and 29) on an application filed July 18, 1912; which latter patent, therefore, is prior to complainant's patent, and in such prior patent the complainant had no greater interest or right than this defendant or the general public. That though the claims of the complainant's patent are founded upon a combination, that does not change the character of the invention if in fact it is a mere improvement in some particular of said prior Reid towel rack. Nevertheless the Master refused to examine into the character of complainant's patent, or to ascertain what portion of the towel rack used by this defendant said patent covered and protected, and what portions it did not protect. (Master's report, pages 63, 64). And further refused to segregate and apportion the alleged savings of the defendant, due to the use of said towel rack relatively to the features of the latter protected by said patent. All of which proceedings of the Master were contrary to law and equity. That it was the duty of complainant to show, and the Master to ascertain, the character of said patented invention, and the Master should have confined his award to a fair compensation to complainant for the actual infringement perpetrated by defendant upon said patent, and if the complainant did not carry its burden, and the evidence introduced did

not permit the Master to arrive at a proper apportionment, then he should have awarded only nominal damages.

(d) Said finding is further erroneous and inequitable because the complainant's patent apparently is itself dominated by the letters patent of the United States issued to Jacques Roussio October 19, 1915, No. 1,157,046, on an application filed January 12, 1912, and this defendant sought to prove said fact by proper and sufficient evidence, also the obligation of this defendant under the latter patent, but complainant objected to such proof, and the Master erroneously sustained such objection and refused to hear any proof of said matters, as appears in the Transcript of Testimony before Master, pages ~~100~~⁸² to ~~122~~⁸⁴. In consequence this defendant, contrary to the principles of equity, may be subjected to a double liability, namely, the two independent inventors and patentees, for the taking of the same thing, instead of compensating each patentee only proportionately to his interest in such thing. And, furthermore, said patent to Roussio bore directly on the prior state of the art, and proof of said patent should have been admitted in order to enable the Master correctly and equitably to determine what it was that was secured to the complainant by the patent in suit.

II.

This defendant also excepts to the finding of the Master in his report (page 67, last paragraph) to the effect that the circumstances of the alleged infringement by this defendant warrants the award of triple damages,

also to the recommendation of the Master that the Court so increased the damages awarded by the Master to the complainant, or so increase any damages which the complainant may be entitled to recover in this suit, because said finding and recommendation are erroneously and inequitable, for said finding and recommendation are:

(1) Not based upon any evidence showing that these defendants did more than defend their supposed rights, and in so doing compelled complainant to litigate and establish the legal character and scope of its patent.

(2) Said finding and recommendation of the Master are contrary to law, and particularly to the principles and practise of a court of equity, and tend to establish the inequitable rule that any one contending with the patentee as to the construction to be placed on his patent does so at his peril and may have punitive damages visited on him for refusing to accept, in the first instance, the construction placed by the patentee on his own patent.

III.

These defendants hereby further except to the finding and award by the Master of any other than nominal damages to the complainant, for the reason that the evidence does not show in what sum, if any, the complainant sustained any actual damage by reason of any infringement by this defendant upon the patent in suit.

T. J. GEISLER,

Solicitor for Broadway Towel Supply Company.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

**ORDER OVERRULING EXCEPTIONS I AND
III AND SUSTAINING EXCEPTION II.**

The exceptions of defendant, Broadway Towel Supply Company to the report of the Master on accounting, which report was filed December 21, 1916, having come on for hearing, T. J. Geisler appearing of counsel for said defendant, and Joseph L. Atkins appearing as counsel for complainant, it is, upon consideration

ORDERED, ADJUDGED AND DECREED that exceptions I and III be and they hereby are overruled, and that exception II, concerning the recommendation of the Master that the damages found by the latter be trebled by the court, be and the same is sustained.

CHAS. E. WOLVERTON,
Judge.

Dated January 25, 1917.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

FINAL DECREE.

Entered January 22, 1917.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was **ORDERED, ADJUDGED AND DECREED** as follows, viz.: That said defendants pay to the said plaintiff the sum of Three Hundred and Thirty-five (\$335.00) Dollars, with interest from the date of the Master's report.

IT IS ORDERED, ADJUDGED AND DECREED that said plaintiff be allowed its costs and disbursements of said suit to be taxed, and that this plaintiff have execution for such costs, and the sums above decreed, to be paid to said plaintiff.

CHAS. E. WOLVERTON,

Judge.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title.)

The above named defendants, conceiving themselves aggrieved by the findings and conclusions of the Court in the above named case, and the final decree thereon entered Jan. 22, 1917, hereby appeal from said final decree, and all interlocutory proceedings, to the United States

Circuit Court of Appeals for the Ninth Circuit, and they pray that this appeal may be allowed, and that a transcript of the records and proceedings of said District Court, on which said final decree is founded, may be sent, duly authenticated, to said Circuit Court of Appeals.

Dated March 22, 1917.

BROADWAY TOWEL SUPPLY CO.,

By Amos Burg, President,

AMOS BURG,

Defendants.

T. J. GEISLER,

Of Counsel for Defendants.

And now it is ORDERED that the appeal above prayed for be allowed, and the defendants asking for a stay of further proceedings until such appeal shall be heard, it is further

ORDERED that upon the defendants filing a bond, with approved surety, in the sum of One Thousand Dollars, such stay be and the same is hereby granted.

CHAS. E. WOLVERTON,

District Judge.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title.)

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS,
that we, Broadway Towel Supply Company, a corporation, and Amos Burg, both of Portland, Oregon, as prin-

cipals, and Percy G. Allen, of Portland, Oregon, as surety, are held and firmly bound unto the above named plaintiff in the sum of One Thousand Dollars, to be paid to the plaintiff, or its legal representatives, executors or administrators, and to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated March 22, 1917.

WHEREAS, the above named defendants have appealed to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the final decree and preceding proceedings by the District Court of the United States for the District of Oregon in the above entitled cause:

NOW, THEREFORE, the condition of this obligation is such that if the above named plaintiffs shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

BROADWAY TOWEL SUPPLY CO.,

By Amos Burg, President,

AMOS BURG,

PERCY G. ALLEN, Surety.

Signed, sealed and delivered in presence of:

Cecil Long.

United States of America,
District of Oregon—ss.

I, Percy G. Allen, of Portland, Oregon, being duly sworn, depose and say that I am the surety named in the foregoing bond, that I am a resident and freeholder within said District, and that I am worth, in property situated therein, the sum of One Thousand Dollars, over and above all my just debts and liabilities, exclusive of property exempt from execution.

PERCY G. ALLEN.

Subscribed and sworn to before me this 22nd day of March, 1917.

CECIL LONG,

(L. S.)

Notary Public for Oregon.

My commission expires Dec. 21, 1920.

Endorsed. Approved March 27, 1917.

CHAS. E. WOLVERTON,

District Judge.

ASSIGNMENTS OF ERROR.

The above named defendants, having appealed to the United States Circuit Court of Appeals for the Ninth District from the final decree entered in the above named cause, do hereby assign the following as the errors committed therein, to-wit:

I.

In finding that the towel rack used by defendants from and after December 1, 1914, to date of trial of this cause was not substantially different from the device claimed in the patent in suit, and that defendants' said device is an infringement of the device claimed in the patent in suit.

II.

In giving to the claims of the patent in suit a broader interpretation than warranted on the face thereof, or permitted by the prior state of the art.

III.

In finding that the device used by the defendants from December 1, 1914, is an infringement of the invention claimed in the patent in suit, because such finding is contrary to the principle and spirit of the patented invention in question, and also contrary to the law governing patents for combinations.

IV.

In finding that the device used by defendants from December 1, 1914, although merely an obvious modification of the patented invention of Reid, of record, which is prior to the patent in suit, nevertheless is an infringement of the patent in suit, for such finding disregards the rights vested in the general public prior to the issuance of the patent in suit.

V.

In finding that in order for the Court to hold that the device used by defendants from December 1, 1914, is not an infringement of the device claimed in the patent in suit, because substantially like the prior Reid patent of record, it must appear that the said defendants' device had added to it a new element or discovery, and without such defendants' device is merely colorable, and without such patentable variation as will avoid infringement.

VI.

In finding that there was substantial identity between the device claimed, and secured, by the patent in suit and the device used by defendants from December 1, 1914, with respect: (first) to the result attained, (second) the means of attaining that result, and (third) the manner in which the different parts operate and co-operate to produce that result; and in not finding that there was a substantial difference in said two devices in these respects.

VII.

In the entry of the interlocutory decree in this cause, because in prejudice of the substantial rights and equities of the deefndants in the premises.

VIII.

In denying the petition of defendants for relief to file, under equity rule 34, a supplemental answer alleging material facts of which they were ignorant at the time of their original answer, to-wit: setting forth patents of the United States granted for inventions prior to that of the patentee in suit, and bearing directly on the invention claimed in the latter patent with respect to the validity and scope thereof, and also bearing on the obligation of defendants under the patents of said prior inventors, which obligations defendants desired to be taken into account on their accounting herein.

~~IX.~~

~~In the entry of the supplemental interlocutory decree because in prejudice of the substantial rights and equities of the defendants in the premises.~~

~~X.~~

~~In the refusal to vacate said supplemental decree.~~

XI.

In overruling the defendants' exception I to the report of the Master on accounting.

XII.

In overruling the defendants' exception III to the report of the Master on accounting.

XIII.

In affirming the report of the Master, awarding the sum of \$335.00 against the defendants because such award is excessive, not supported by, and contrary to, the facts of the case.

XIV.

In awarding any other than a nominal sum against defendants, because the evidence does not show what, if any, actual damages the plaintiff sustained by any alleged infringement.

XV.

In the entry of the final decree in this cause because in prejudice of the substantial rights and equities of the defendants in the premises.

Dated March 23d, 1917.

T. J. GEISLER,

Solicitor and of Counsel for Defendants-Appellants.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

The parties hereby stipulate to the following precipe, indicating those portions of the record to be incorporated in the transcript on appeal in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit.

Bill of Complaint, omitting verification.

Answer, omitting verification.

Condensed statement of testimony given on trial of cause, as prepared and stipulated by the parties in the companion equity case No. 6718, entitled "Brown-Meyer Co. Plaintiff vs. Crystal Laundry Co., et al. Defendants."

Opinion of Trial Court.

Interlocutory decree, entered January 31, 1916.

Petition for leave to file supplemental answer, omitting verification.

Proposed supplemental answer, omitting verification.

Condensed statement of the testimony on accounting before Master, as stipulated by the parties.

Master's report.

Exceptions of defendants to Master's report.

Order of Court on exceptions.

Final decree entered January 22, 1917.

Petition for an order allowing appeal.

Bond on appeal.

Assignments of error.

Citation on appeal.

Dated March 24, 1917.

JOSEPH L. ATKINS,
Counsel for Plaintiff-Appellee.

T. J. GEISLER,
Counsel for Defendants-Appellants.

CITATION ON APPEAL.

No. 6719.

United States of America,
District of Oregon,—ss.

To Brown-Meyer Company, a corporation, Greeting:

Whereas, Broadway Towel Supply Company, a corporation and Amos Burg have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, in said District, this 27th day of March, in the year of our Lord, one thousand, nine hundred and seventeen.

CHAS. E. WOLVERTON,

Judge.

Due service of the within citation is hereby admitted this 27th day of March, 1917.

JOSEPH L. ATKINS,

of Counsel for Brown-Meyers Co.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title)

STIPULATION.

It is hereby stipulated that the foregoing printed transcript is a true copy of the entire record in the above entitled case on appeal and that the same may be certified to as such by the Clerk of said District Court without comparison.

It is further stipulated that printed copies of all patents and writings introduced in evidence by either party, but not placed in the printed transcript, may be furnished to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and by him placed as an appendix in the printed copies of the transcript; and that the original models introduced as exhibits by either party at the trial of this cause in the District Court shall be sent by the Clerk of the latter Court to the Marshal of said Circuit Court of Appeals pursuant to rule 34 of the latter Court.

Dated March 31, 1917.

JOSEPH L. ATKINS,

Of Counsel for Plaintiff, Appellee.

T. J. GEISLER,

Of Counsel for Defendants-Appellants.

United States of America,
District of Oregon—ss.

No. 6719.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed transcript of record on appeal in the case in which the Brown-Meyer Company, a corporation, is plaintiff and appellee and the Broadway Towel Supply Company, a corporation, and Amos Burg are defendants and appellants, is a true and complete transcript of the record and proceedings had in said cause in said Court. This certificate is made pursuant to the stipulation of the parties filed in said cause, without comparison thereof with the original record,

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Portland, in said District, this 5th day of April, 1917.

G. H. MARSH,
Clerk.

Seal

APPENDIX OF DOCUMENTARY EVIDENCE

Containing as Follows:

Patent in suit granted to Charles F. Brown, November 3, 1914, No. 1,115,895, on application filed August 13, 1913, being Plaintiff's Exhibit A. See Record, page 66

File Wrapper of said Patent, being Defendants' Exhibit 2 See Record, page 72

The Patents cited in said File Wrapper, viz:

Patent to N. S. Baldwin and E. S. Goodwin, April 7, 1896, No. 557,754, Defendants' Exhibit 3. See Record, Page 72

Patent to J. G. Cooner, December 29, 1908, No. 908,076, Defendants' Exhibit 4. See Record, page 72

Patent to Jacques Rouso, April 9, 1912, No. 42,398, Defendants' Exhibit 5. See Record, page 72

Patent to L. Straub, September 17, 1912, No. 1,038,984, Defendants' Exhibit 9. See Record, page 73

Patent to T. K. Taylor, February 4, 1913, No. 1,052,292, Defendants' Exhibit 6. See Record, page 72

Patent to Guy Reid, July 15, 1913, No. 1,067,622, Defendants' Exhibit 7. See Record, page 73

Patent to T. Heins and E. R. Galland, November 11, 1913, No. 1,078,501, Defendants' Exhibit 8 See Record, page 73

Here follows Official FILING RECEIPT.

Dated August 13 1913. Serial No. 784,544.

FILE WRAPPER

* *

Patent issued to

CHARLES F. BROWN

November 3, 1914. No. 1,115,895.

TOWEL HOLDERS

Application filed August 13, 1913, Serial No. 784,-
544.

Here follows PETITION in due form.

Here follows descriptive part of specification which was not changed by amendment, and therefore is shown by the same part printed in the patent, copy of which is hereto attached.

The claims as originally appearing in the specification, the actions of the Patent Office, and the amendments making the claims as printed in said patent were as follows:

~~Claims in re patent of Charles F. Brown No. 1115895~~

- ~~1. In a towel holder or the like, the combination
movable
A with a ^ supporting member, of a flexible towel retain-
ing member secured in its entirety thereto.~~
- ~~2. In a towel holder or the like, the combination
" movable
of a ^ supporting member, of a flexible towel retaining
B member, and means for detachably securing the latter
in its entirety to the former.~~

1. ~~3.~~ In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member cooperative therewith for the purpose specified, and means for securing both ends of said retaining member to the assembling member.

2. ~~4.~~ In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member cooperative therewith for the purpose specified, and means for detachably securing both ends of said retaining member together.

~~5. In a towel holder or the like, the combination with a supporting member, of an assembling member swiveled to the supporting member, and a retaining member cooperative with said assembling member.~~

~~6. In a towel holder or the like, the combination with a supporting member, of an assembling member swiveled to the supporting member, and a retaining member carried by said assembling member cooperatively with said supporting member.~~

~~7. In a towel holder or the like, the combination with a supporting member provided with a socket, of an assembling member mounted in said socket, and a retaining member detachably secured to the assembling member.~~

per B

~~8. In a towel holder or the like, the combination with a supporting member provided with a socket, of~~

~~an assembling member mounted therein, a retaining member carried by the assembling member, and common means for securing the retaining member to the assembling member and the assembling member to the supporting member.~~

3 9. In a towel holder or the like, the combination with a supporting member provided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end to the assembling member, and means for detachably securing the free end of the retaining member to the socket end of the assembling member.

4 10. In a towel holder or the like, the combination with a supporting member provided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end to the assembling member, and means for detachably securing the free end of the retaining member to the socket end of the assembling member, said means being adapted also to secure the assembling member in its socket.

~~11. In a towel holder or the like, the combination with a supporting member, of a towel assembling member provided with a threading point, and means for operatively uniting said members, substantially for the purpose specified.~~

Witnesses:

Charles F. Brown

K. D. Fenn

Joseph L. Atkins

Here follows OATH in due form.

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

Washington Dec. 12, 1913.

Mailed " " "

Joseph L. Atkins,

809 Chamber of Commerce,

Portland, Oregon.

Please find below a communication from the EX-AMINER in charge of the application of Charles F. Brown, 784,544, filed Aug. 13, 1913, for Towel Holders.

Thomas Ewing,

Commissioner of Patents.

Claims 1, 2, 3, 5 and 6 are rejected on Reid, 1,067,-622, July 15, 1913 (45/32).

Claims 4 and 8 are rejected on Reid, in view of Taylor, 1,052,292, Feb. 4, 1913 (43/32).

Claim 4 is also rejected as not being warranted by the disclosure.

Claims 9 and 10 are rejected on Reid and Taylor, in view of Heins, 1,078,501, Nov. 11, 1913 (45/32).

Claim 11 is rejected on the above cited references in view of Baldwin, 557,754, Apr. 7, 1896 (129/8).

Attention is directed also to Cooner, 908,076, Dec. 29, 1908 (211/17).

Walter Johnson, Examiner Div. VIII.

H. A. W.

MAIL ROOM

Feb. 24, 1914

U. S. PATENT OFFICE

U. S. PATENT OFFICE

Feb. 25, 1914

DIVISION 8, Paper No. 3

UNITED STATES PATENT OFFICE

Charles F. Brown

Towel Holder

Filed Aug. 13, 1913

Ser. No. 784,544.

Portland, Oregon, February 19, 1914.

Hon. Commissioner of Patents,
Washington, D. C.

SIR:

Responsive to official action of December 12, 1913.
Please amend as follows:

Claim 1, line 2, before "supporting" insert "movable."

Claim 2, line 2, before "supporting" insert movable."

This application was drawn in view of the references cited, and upon a device which in practice corrects the deficiencies of the subject matter of the several references.

Referring to the claims seriatim, claim 1 calls for a retaining member, to-wit, the chain 19, secured in its entirety to a supporting member or shelf 1. Reid shows no such construction, but shows a lock-case 2, and separate ring 6. Assuming that the examiner has upon a strained construction included the wall to which the

members 2 and 6 may be attached in order to constitute a supporting member, amendment of the claim has been made, although it is submitted that such a construction is inadmissible.

Claim 2 is amended in like manner and for corresponding reasons as claim 1.

Claim 3 calls for a combination in which both ends of the chain are secured to the assembling member, or member 4. Reid shows no such construction. The inclusion of the wall by construction cannot be made in respect to claim 3, because applicant's assembling member 4 corresponds in function to Reid's member 1 and 1a. There is a distinct utility in the subject matter defined in claim 3, in that it renders the entire length of the looped chain available to the user of a towel, while the reach of Reid's chain is much restricted.

In respect to claim 4, neither Reid nor Taylor shows means for detachably securing both ends of the retaining member together. Let it be noted that in applicant's construction his assembling member constitutes an elongated link of special function in the retaining member. Taylor shows and describes a duplicated rack, whereof two arms 8 are united. Taylor's part 7 corresponds to applicant's assembling member 4, and his arm 8 to applicant's retaining member. Taylor's arm 8 is not united to the part 7 of his rack except at one end, and there is no intercommunication between Taylor's arm 8, upon which one may be predicated as a continuation of the other.

The Examiner's objection that claim 4 is not warranted by the disclosure, is not made clear. If insisted upon, a more particular statement is requested, but it is believed that discriminating reconsideration will remove this objection.

In respect to claim 5, an assembling member swiveled to the supporting member is called for, and is not shown in Reid. On the contrary Reid shows a lock in Fig. 3, which prohibits rotative movement of the member 1. In Fig. 4, the locking device 2a is described as identical with that shown in Fig. 3.

The above observation applies also to claim 6.

Argument in support of claims 3 and 4 is applicable to claim 8.

The action in respect to claims 9, 10 and 11, it is submitted, is either not clear, or is clearly unwarranted. The practice of collocating a plurality of separate and distinct references to meet a distinct combination has been so often condemned, both by the courts and in patent office practice, as to require no serious consideration. A restatement of the grounds of rejection, or reversal of action is solicited.

This application is, in view of the foregoing, deemed to be in condition for allowance, and that action is accordingly solicited.

Very respectfully,
CHARLES F. BROWN,
By Joseph L. Atkins, Attorney.

DEPARTMENT OF THE INTERIOR
UNITED STATES PATENT OFFICE

Washington, Mar. 26, 1914.

Mailed

“ “ “

Joseph L. Atkins
809 Chamber of Commerce
Portland, Ore.

Please find below a communication from the Examiner in charge of the application of Charles F. Brown, 784,544, filed Aug. 12, 1913, for Towel Holders.

THOMAS EWING,
Commissioner of Patents.

Amendment of Feb. 24, 1913, is of record.

Claims 1 and 2 are rejected on Taylor, of record, or Rousso, Design 42,398, Apr. 9, 1912, in view of Reid, of record. It does not involve invention to substitute the retaining member of Reid for that of Taylor or Rousso. These claims are also objectionable as being indefinite in terms. The expression “in its entirety” does not set forth any structure.

As far as set forth in claim 3, the ends of the flexible member are secured to the retaining member only as to a convenient support. To secure the lower end of Reid's flexible member to any other convenient part of the device than that selected by the patentee does not involve invention or patentable novelty. Claim 3 is accordingly rejected.

Claim 4 is rejected either as not being warranted by the disclosure or as being met by Reid. If the ap-

plicant shows means for connecting the ends of the flexible member, Reid does also.

Claims 5, 6, 7 and 8 and 11 are rejected as reading directly on Heins, of record.

Claims 9 and 10 stand rejected on Heins and Reid, of record. It does not apparently involve invention to substitute the retaining member of Reid for that of Heins. These claims are also rejected as being inaccurate. The retaining member does not appear to be flexibly secured to the assembling member. It is pivotally secured.

H. LEWIS,
Examiner.

H.A.W.

JUL 28 1914

U. S. PATENT OFFICE

Room 131

Charles F. Brown

Serial No. 784,544

Filed August 13, 1913

Towel Holders.

Portland, Oregon, July 23, 1914.

Hon. Commissioner of Patents,
Washington, D. C.

SIR:

Response to official letter of March 22.

Under date of February 19, 1914, counsel for applicant submitted a paper by way of amendment, in which painstaking effort was made, by compliance with rule 68, to assist in the disposition of this case.

It is with all due respect submitted that the reply of March 26th is not reciprocal either in matter or form. In almost every instance, although the claims are substantially the same, the grounds of rejection set up in Paper No. 2 are in paper No. 4 shifted, without any explanation whatever. Such action is not calculated to promote or even to admit of intelligent response, and is not believed to constitute a proper compliance with the requirements of the rules of practice. The nature of the last official action taken in this case is fairly summarized in the last two sentences thereof, namely: "The retaining member does not appear to be flexibly secured to the assembling member. It is pivotally secured." It ap-

pears to be unnecessary to submit argument that a pivotal connection is a flexible connection, inasmuch as it must be apparent to anyone having the least skill in the art or any mechanical art, that any possible connection between a chain and a rigid member is a flexible connection.

With respect to claims 1 and 2, which in paper No. 2 were rejected on Reid, and are in paper No. 4 rejected on Taylor or Rousso, it is submitted, as it was formerly in Paper No. 3, that Reid does not show the construction claimed. Neither Taylor nor Rousso shows anything approximating the construction, nor a construction which is interchangeable one with the other.

It has been repeatedly held that the charge of infringement cannot be escaped by allegation or proofs that parts of a combination are to be separately found in different prior patents.

Bates vs. Coe, 98 U. S. 31-50.

Parks vs. Booth, 102 U. S. 96.

It is scarcely necessary to argue that grounds of rejection of a claim and a defense against infringement are in all respects identical. It would appear that grounds of rejection urged against claims 1 and 2 are made in disregard of the authorities cited, which reflect, it is submitted, the law on the subject beyond controversy.

In respect to claim 3, if the examiner's argument is understood, it means that Reid's chain has its ends connected, because they are both attached to a wall. This

appears to exclude arbitrarily that which constitutes the very gist, in part, of applicant's invention.

It is error for the examiner to say, "The ends of the flexible member are secured to the retaining member only as to a convenient support." On the contrary, the combination described in Figure 3 defines a special construction and a distinct utility. It is this, in the Reid device, as shown partly in Figure 2, each individual towel must be used in close proximity to the other towels, clean and soiled, upon the holder. Of course, it may be said that this situation may be relieved by increase of length of chain. But this does not meet the situation. To increase the length of chain beyond certain limits is impracticable, and would tend to defeat the purpose of the device, in the kinking of the chain, for example. Applicant has devised means for obtaining the maximum availability of each individual towel in use without impairment of the certainty of operation of the device.

The grounds of rejection of claim 4 are not understood, unless they be substantially the same as those urged against claim 3. In that event they are submitted to be, equally with claim 3, inapt. A more specific statement of grounds of rejection, in view of applicant's argument in paper No. 3, is requested.

In respect to claims 5, 6, 7, 8 and 11, it is observed that although in the last official letter they are rejected on Heins of record for the first time, having been previously rejected upon other references, they are now said to read directly on Heins. This allegation is traversed.

Claim 5 covers in combination the following elements:

1. A supporting member.
2. An assembling member swiveled to the supporting member.
3. A retaining member co-operative with said assembling member.

Heins shows two supports, a tube 4 for the upper support, and a rod 5 for the lower. It is supposed that the terms employed in the claim are understood to be selected for the purposes of distinction only. Nevertheless, it is submitted that the principle and functions of their subject matter are clearly intelligible, and are clearly distinguishable from Heins. The examiner, if he persists in previous action, is requested to indicate what he regards in Heins as a supporting member, what as an assembling member, and what as a retaining member.

The rejection of the remaining claims of the group last named is believed to be made upon reasons that are not clearer than the rejection of claim 5, and further explanation or withdrawal of the rejection is solicited.

The grounds of rejection of claims 9 and 10 is not understood. There is no relationship between Heins and Reid of record. If it were conceded that as between Reid and Heins there is the difference only of a flexible and a rigid retaining member, yet, so far as applicant is concerned, there is no such close similarity.

In respect to Claims 9 and 10, not only does the argument previously submitted in support of claim 3 apply, but also additional means are comprehended in the claim for securing the flexible member a maximum limit of movement.

So far as counsel for applicant can discover, this application is in condition for allowance, and action accordingly is solicited.

Very respectfully,

CHARLES F. BROWN,
By Joseph L. Atkins, his Attorney.

Washington, Aug. 24, 1914
Mailed " " "

THOMAS EWING,
Commissioner of Patents.

GEO. P. TUCKER,
Examiner.

H.A.W.

Mail Room
Sept. 8, 1914
U. S. Patent Office
Room 131

Division 8, Paper No. 7
Sept. 9, 1914
U. S. Patent Office

UNITED STATES PATENT OFFICE.

Charles F. Brown.
Serial No. 784,544
Filed August 13, 1913
Towel Holders.

Portland, Oregon, September 3, 1914.

Hon. Commissioner of Patents,
Washington, D. C.
Sir:

Response to official letter of August 24, 1914.

The alleged informality of claims 9 and 10, appears to be, that the retaining member is not flexibly secured to the assembling member. This, as was observed in the last action, appears to be an absurdity. Its reiteration suggests that there is a mistake made somewhere, and the indulgence of the examiner is therefore requested. The assembling member is the member 4 clearly shown in Fig. IV. The retaining member is the member 19 on the same figure. They are flexibly united at 18, and are not pivotally secured together.

It is believed that there is now no room for doubt, that the allegation of informality will be withdrawn.

In respect to the action on the merits, applicant denies the pertinency of the references to claims 1, 2, 5, 6, 7,

8 and 11. He is, however, satisfied to accept allowance upon claims 3, 4, 9 and 10, subject to such construction as they are entitled to receive in view of the prior state of the art and without restriction in consequence of the imputed disclaimer upon his part.

He, therefore, without prejudice to his just rights in the premises, authorizes and requests erasure of all the claims, except claims 3, 4, 9 and 10. With respect to those claims, it is requested that their numerals be changed to 1, 2, 3 and 4, respectively, and that the application be passed to issue.

Very respectfully,

CHARLES F. BROWN,
By Joseph L. Atkins, Attorney.

Here follows Official NOTICE OF ALLOW-
ANCE in due form, dated September 21, 1914.

Here follows Official Receipt of final fee in due form
giving date patent will issue as Nov. 3, 1914.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title.)

IT IS HEREBY STIPULATED AND CER-
TIFIED that the foregoing is a full, true and complete
copy of the file wrapper in the application for patent of
Charles F. Brown, filed August 13, 1913, Serial No.
784,544, series of 1900, for improvement in Towel Hold-
er, such application having been allowed September 21,
1914, and letters patent thereon being issued November
3, 1914, No. 1,115,895, and that this file wrapper may
be introduced in evidence by either party to the same
effect as if the same had been certified by the United
States Patent Office.

Dated, Portland, Oregon, November 18, 1915.

JOSEPH L. ATKINS,

Solicitor for Plaintiff.

T. J. GEISLER,

Solicitor for Defendants.

Here follows Official NOTICE OF ALLOW-
ANCE in due form, dated September 21, 1914.

Here follows Official Receipt of final fee in due form
giving date patent will issue as Nov. 3, 1914.

*In the District Court of the United States for the
District of Oregon.*

No. 6719.

(Title.)

IT IS HEREBY STIPULATED AND CER-
TIFIED that the foregoing is a full, true and complete
copy of the file wrapper in the application for patent of
Charles F. Brown, filed August 13, 1913, Serial No.
784,544, series of 1900, for improvement in Towel Hold-
er, such application having been allowed September 21,
1914, and letters patent thereon being issued November
3, 1914, No. 1,115,895, and that this file wrapper may
be introduced in evidence by either party to the same
effect as if the same had been certified by the United
States Patent Office.

Dated, Portland, Oregon, November 18, 1915.

JOSEPH L. ATKINS,
Solicitor for Plaintiff.

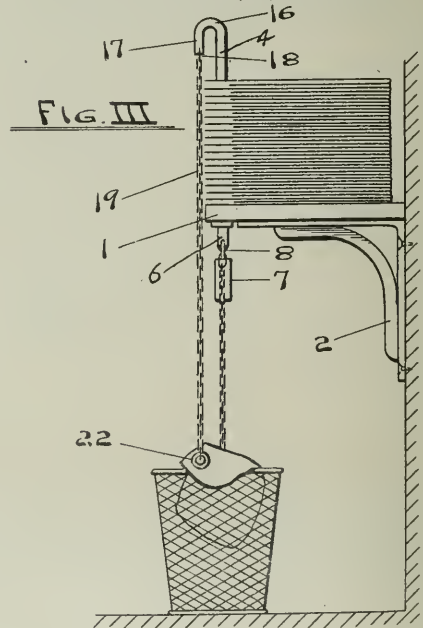
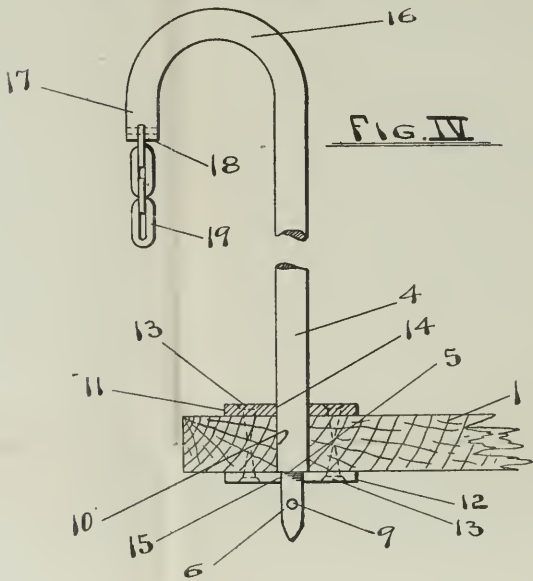
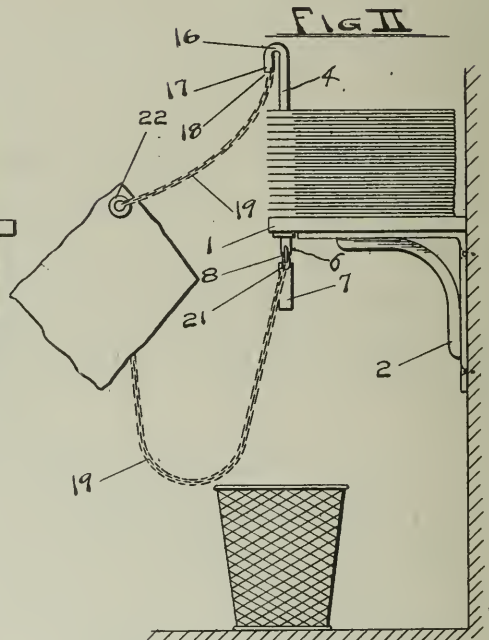
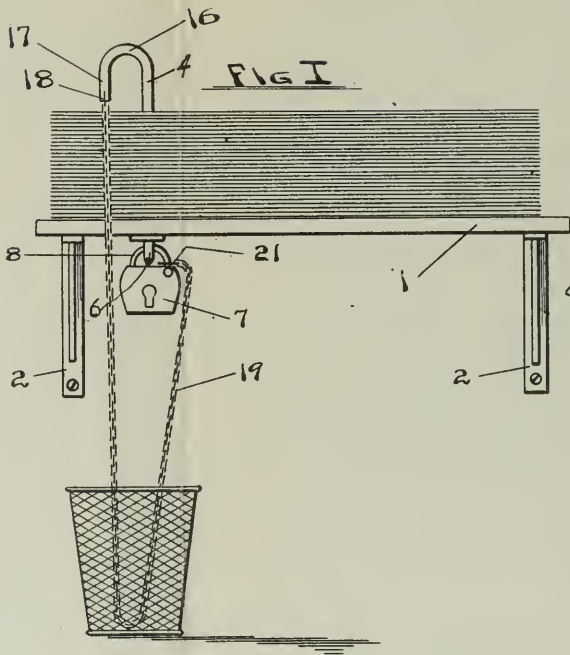
T. J. GEISLER,
Solicitor for Defendants.

APPELLEE'S (PLAINTIFF'S) EXHIBIT "A"
Patent to C. F. Brown, Nov. 3, 1914, No. 1,115,895.

C. F. BROWN.
TOWEL HOLDER.
APPLICATION FILED AUG. 13, 1913.

1,115,895.

Patented Nov. 3, 1914.



WITNESSES:

H. D. Fern
E. M. M. M. M.

INVENTOR:

Charles F. Brown,

BY

Joseph W. Atkins
ATTORNEY.

UNITED STATES PATENT OFFICE.

CHARLES F. BROWN, OF PORTLAND, OREGON, ASSIGNOR TO BROWN-MEYER COMPANY,
OF PORTLAND, OREGON, A CORPORATION OF OREGON.

TOWEL-HOLDER.

1,115,895.

Specification of Letters Patent.

Patented Nov. 3, 1914.

Application filed August 13, 1913. Serial No. 784,544.

To all whom it may concern:

Be it known that I, CHARLES F. BROWN, a citizen of the United States of America, residing at Portland, in the county of Multnomah, in the State of Oregon, have invented certain new and useful Improvements in Towel-Holders, of which the following is a specification, reference being had to the accompanying drawing.

My invention relates to towel holders, and has for its object the production of a device for holding and preserving in order an assemblage of clean towels that are carried in such a manner as to keep them clean, folded and smooth as they come from the laundry until such time as they are required, one by one, for use.

A further object of the invention is to provide means for conveniently withdrawing the towels one by one from the pile, for facilitating the manipulation of it while in use, and for securing it against accidental misplacement or intentional and unauthorized removal after use.

What constitutes my invention will be hereinafter specified in detail and succinctly set forth in the appended claims.

In the accompanying drawing: Figure I is a front elevation of my invention complete in its present preferred form of embodiment. Fig. II is an end elevation of the same, looking toward that end of the device upon which the clean towels are assembled, and showing one of the towels removed from the pile of clean towels as in use. Fig. III is a view similar to Fig. II showing the towel as illustrated in use in Fig. II dropped to that position in which it is discarded after use, wherein the used towels accumulate and are secured, until the supply of clean towels is exhausted or until so many of them have been used as may be required in service before replenishment of the clean supply. Fig. IV is a vertical sectional view illustrating the clean towel assembling member in place on an enlarged scale.

Referring to the numerals on the drawing, 1 indicates a horizontal supporting member, or, as illustrated, a shelf, which, being of any suitable shape and dimensions and made of any preferred material, is adapted to be held in any desired position, as against any vertical wall, upon brackets 2. The shelf illustrated is presented by way

of example only, and is intended to represent any suitable instrumentality for the function required of it, whether it be a simple shelf or a part of a cabinet or other device. The function of the shelf 1 is to carry a pile of clean, preferably folded, towels which may be of any preferred size, and whose size will, of course, determine the dimensions of the shelf 1.

In combination with the shelf 1, and for securing the towels in assemblage thereupon, I prefer to employ an assembling member 4, which I prefer also to swivel and detachably secure to the shelf 1. For this purpose, the lower end of the member 4 may be reduced to form a shoulder 5, the reduced end 6 extending below and clear of the shelf 1 to accommodate means for detachably securing the member 4 in place. Such means may consist, as shown, of a padlock 7, whose shackle 8 passes through an aperture 9 provided for its free passage through the reduced end 6 below the shelf 1.

For insuring a stable support for the assembling member 4 rotatably upon the shelf 1, I prefer to provide a suitable socket upon the shelf. This socket may consist of an aperture or bore 10 formed in the material of which the shelf 1 is composed so as to snugly fit about the assembling member, whose shape, as well as that of the conforming socket, is preferably cylindrical. To lend durability to the bearing parts of the socket, the bore 10 may be reinforced by a top plate 11 and a bottom plate 12, secured respectively as by screws 13 to opposite sides of the shelf 1. The top plate is penetrated by an aperture 14 made to snugly fit the end of the assembling member 4 while the bottom plate is provided with an aperture 15, assembled coaxially with the aperture 14 of the top member, but of smaller diameter to fit the reduced end 6 of the assembling member. By this construction the assembling member is rotatably secured in the socket provided for it, and is supported therein by an engagement between the shoulder 5 with the circumscribing wall of the aperture 15 in the bottom plate. The aperture 9 in the reduced end of the assembling member is located in such close juxtaposition to the lower side of the bottom plate as to render the shackle of the padlock 7 when in place a confining member that will serve to secure the assem-

bling member rotatably in the upright position upon the shelf 1.

The member 4 extends preferably in a direct line above its supporting socket for a distance proportionate to the number and character of the towels that are, in service, assembled upon it, and it preferably terminates at its free end in a curved neck 16, terminating in a depending end 17. By reason of the function of the assembling member, as will be hereinafter made more fully to appear, it is desirable that the neck of the assembling member should terminate at a distance above the shelf 1 substantially equal to or a little greater than the thickness of the maximum towel-supply upon the shelf 1 about the member 4.

In connection with the assembling member and its shelf I provide means for confining the towels during use and after use by a towel retaining member whose function being that of securing them against loss or unauthorized abstraction I prefer not only to flexibly unite, as indicated at 18, to the depending end 17 of the neck 16 of the assembling member, but also to constitute it of flexible material or substantially in the form of a chain, as illustrated. The flexible member or chain 19 is preferably permanently united to the depending end 17 of the neck, while its free end is removably secured to the other end of the member 4, preferably by the aid of an eyelet 21 through which the shackle 8 of the padlock is passed when the padlock is secured in place upon the lower end of the member 4 as in the manner previously specified.

Each of the towels above referred to being, as has been specified, of any preferred material and dimensions, is provided, preferably near one corner, with a gromet 22, (see Fig. II) which adapts it to slide freely upon the member 4 but with amply secure attachment thereto.

In practice, each shelf, wherever installed, is provided with its assembling member and means for securing it in place, and is designed to afford an ample supply of towels under approved sanitary conditions. Such conditions require that an uninterrupted supply of clean towels shall be provided to meet the demands in service of each installation. In making provision to that end, the means for supplying each device with fresh supplies of towels must take into consideration numerous conditions. For example, inasmuch as a supply attendant, in order to cover economically a territory assigned to him, must carry as little weight as possible, I provide by my invention for dispensing, in this connection, with all weight except that of the towels themselves. But it is also necessary to economize time in making the distribution of clean towels and the collection

of soiled ones. My invention is in all respects, and more particularly in respect to the shape of the assembling member and the relation of its parts to the whole, adapted to facilitate and to effect in the shortest space of time the stringing of the towels upon the assembling member through their respective gromets; the stripping of the soiled towels from the retaining member of the device; and the adjusting and securing of the several parts in operative position. In this connection it may be observed that while the neck 16 and its depending end 17 serve to confine the clean towels upon the shelf against accidental displacement, the termination of said depending end at a distance above the shelf equal to or greater than the thickness of the maximum pile of towels thereon renders it practicable and convenient to insert the assembling member through the gromet of the towels and secure it in place with that minimum degree of attention which the manipulation of a simple straight rod would entail.

The rigidity of the assembling member, which is preferably made a feature thereof, serves to secure the clean towels in place upon the shelf, while the flexibility of the retaining member, constituting as it does in fact a continuous extension of the assembling member, provides for the widest latitude of manipulation of the individual towels in use. It may be further observed that to facilitate and expedite towel service supply in connection with my towel holder, it is contemplated, in practice, that the towels will be assembled and tied in bundles at the laundry or source of supply, with all the gromets of each bundle in register. In consequence, opportunity for crumpling or soiling of the towels in transit is minimized, and all that remains for the attendant to do, in supplying a bundle to the holder after removal of the soiled towels, is to lay the fresh bundle on the shelf 1, then set and secure the assembling member 4 in place upon the shelf, after first inserting it through the alined gromets of the bundle. Toward this end, I prefer to finish the end 6 of the member 4 with a threading point, rounded or conical, as shown clearly in Fig. IV.

I claim:

1. In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member, a flexible retaining member coöperative therewith for the purpose specified, and means for securing both ends of said retaining member to the assembling member.

2. In a towel holder or the like, the combination with a supporting member, of an assembling member adapted to secure towels in assemblage upon the supporting member,

a flexible retaining member coöperative therewith for the purpose specified, and means for detachably securing both ends of said retaining member together.

5 3. In a towel holder or the like, the combination with a supporting member provided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end to the assembling member, and means for detach-
10 ably securing the free end of the retaining member to the socket end of the assembling member.

4. In a towel holder or the like, the com-

bination with a supporting member pro- 15
vided with a bore, of an assembling member rotatably fixed in said bore, a retaining member flexibly secured at one end to the assembling member, and means for detach- 20
ably securing the free end of the retaining member to the socket end of the assembling member, said means being adapted also to secure the assembling member in its socket.

CHARLES F. BROWN.

Witnesses:

K. D. FENN,

JOSEPH L. ATKINS.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

APPELLANTS' (DEFENDANTS') EXHIBIT "3"

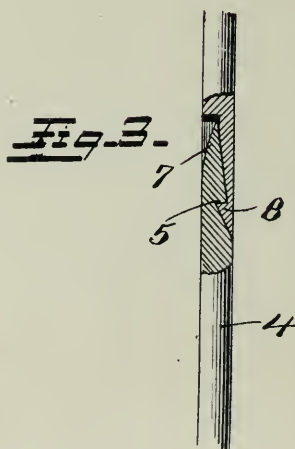
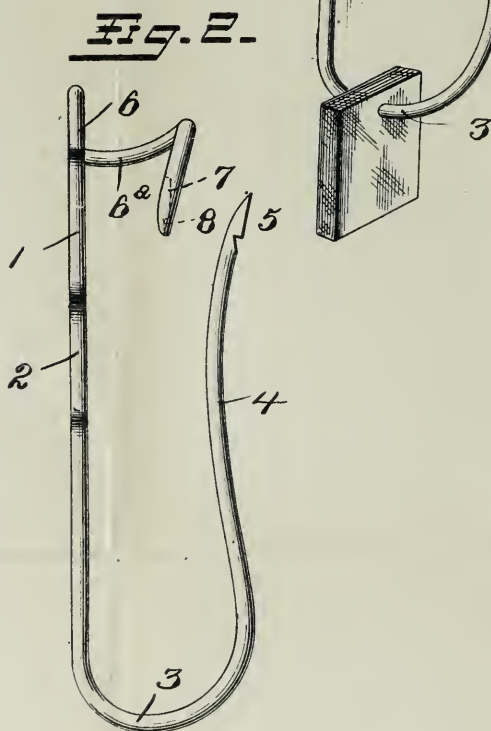
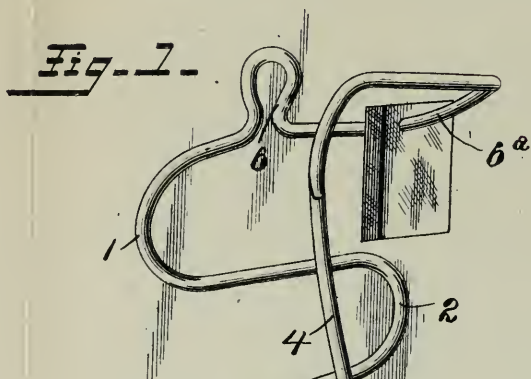
Patent to Baldwin & Goodwin, Apr. 7, 1896, No. 557,754.

(No Model.)

N. S. BALDWIN & E. S. GOODWIN.
BILL FILE.

No. 557,754.

Patented Apr. 7, 1896.



Witnesses

H. J. North
P. M. Smith

By *their* Attorneys.

Inventors
Nelson S. Baldwin
and
Ervin S. Goodwin

Cashow & Co.

UNITED STATES PATENT OFFICE.

NELSON S. BALDWIN AND ERVIN S. GOODWIN, OF SPOKANE, WASHINGTON.

BILL-FILE.

SPECIFICATION forming part of Letters Patent No. 557,754, dated April 7, 1896.

Application filed June 11, 1895. Serial No. 552,447. (No model.)

To all whom it may concern:

Be it known that we, NELSON S. BALDWIN and ERVIN S. GOODWIN, citizens of the United States, residing at Spokane, in the county of Spokane and State of Washington, have invented a new and useful Bill-File, of which the following is a specification.

This invention relates to an improvement in bill-files, and has for its object to provide a simple and efficient form of device adapted to receive and hold letters, bills, or papers of any kind, and by means of which any particular bill or paper may be removed independently of and without detaching the other papers.

Other objects and advantages of the invention will appear in the course of the subjoined description.

The invention consists in a bill-file made from a single piece of wire bent in such manner as to form a supporting eye or loop, by means of which it may be attached to a wall or vertical support and having reversely-curved portions forming a supporting-back for holding the device in position upon the wall, said device also comprising a paper-holding loop, a pointed and notched file-stem, and a curved switch having its end recessed and provided with a catch for engaging the pointed notched end of the file-stem.

The invention consists also in certain features and details of construction and arrangement of parts, as hereinafter particularly described, illustrated in the drawings, and finally embodied in the claims.

In the accompanying drawings, Figure 1 is a perspective view of an improved bill-file constructed in accordance with this invention. Fig. 2 is a side elevation of the same in position to receive bills or other papers. Fig. 3 is an enlarged detail section taken through the interlocking ends of the file-stem and switch-arm.

Similar numerals of reference designate corresponding parts in the several figures of the drawings.

Referring to the accompanying drawings, the bill-file contemplated in this invention is formed from a wire blank or single piece of wire having the required stiffness and elasticity. At or near its central portion this wire blank is bent in such manner as to form

a supporting-back comprising reversely-disposed curved portions 1 and 2, the curves or bends being made of such extent vertically and horizontally as to form a supporting-back of any desired area. After forming the supporting-back one terminal is extended downwardly any desired distance, according to the capacity which it is desired to impart to the file, and thence curved gradually forward to form the hook 3, which receives and holds the bills or other papers. This terminal is then extended upwardly to form the file-stem 4, the upper extremity of which is pointed for facilitating the impaling or puncturing of the bills or papers. Slightly below the point of the file-stem a notch 5 is formed, said notch being arranged in the face of the file-stem which lies adjacent to the extremity of the other terminal, hereinafter described. The other terminal, after forming the supporting-back of the file, is first bent to form a loop or eye 6, by means of which the device may be supported upon a convenient nail projecting from the wall, and then curved forwardly and to a slight extent upwardly to form an inclined switch 6', adapted at certain times to receive and hold a portion of the bills or papers, as hereinafter explained. The extremity of this terminal is now bent downwardly into line with the other terminal or file-stem and is provided with a recess or socket 7, adapted to receive and snugly embrace the pointed tapering end of the file-stem. This socket in the terminal of the switch is formed with an internally-arranged spur or catch 8, which is adapted to engage the notch in the pointed end of the file-stem when the terminals are brought together, as shown in Figs. 1 and 3.

By means of the construction hereinabove described it will be apparent that the device may be rendered capable of receiving any number of bills or papers, that the same may be quickly placed thereon, and that when any particular bill or paper is wanted the bills or papers which lie in front of the same may be moved upwardly and passed over the junction between the terminals and upon the switch, after which the file-stem may be disengaged from the terminal of the switch and allowed to spring forward into its normal position, as indicated in Fig. 2, whereupon the desired bill or paper may be removed from the file.

It will be seen that when the terminals are in engagement, as indicated most clearly in Fig. 3, they will be prevented from moving vertically out of engagement, will be held in close engagement by the spring-pressure of the file-stem, and may be disengaged only by pressing the file-stem laterally in a manner that will be readily understood. The object in inclining the switch-arm as shown is to give the bills or papers a tendency to slide away from the terminal of the switch or toward the wall for preventing the same from escaping or being blown from the terminal of the switch.

It will be apparent that changes in the form, proportion, and minor details of construction may be resorted to without departing from the spirit or sacrificing any of the advantages of this invention.

Having thus described the invention, what is claimed as new, and desired to be secured by Letters Patent, is—

1. A bill-file made from a wire blank, the same being given one or more convolutions to form a supporting-back, one of the terminals being bent forward, recurved and then extended substantially parallel to and in advance of the back to form the file-stem, the opposite terminal being extended to one side,

then forwardly to form a lateral switch, the said terminal being finally brought into the proximal plane of the stem and formed to receive the point of the stem, substantially as and for the purpose described.

2. A bill-file made from a single wire blank recurved one or more times in the same plane to form a supporting-back, and also provided with an eye or loop for suspending the same, said device also comprising a forwardly-extending paper-hook, an upwardly-extending pointed terminal arranged in advance of the supporting-back, a laterally-disposed switch formed by extending the other terminal of the blank to one side of the center then forward and finally bringing its extremity into the proximal plane of the aforesaid terminal, the end of the switch having a recess or socket therein for receiving the point of the file-stem, substantially as and for the purpose described.

In testimony that we claim the foregoing as our own we have hereto affixed our signatures in the presence of two witnesses.

NELSON S. BALDWIN.
ERVIN S. GOODWIN.

Witnesses:

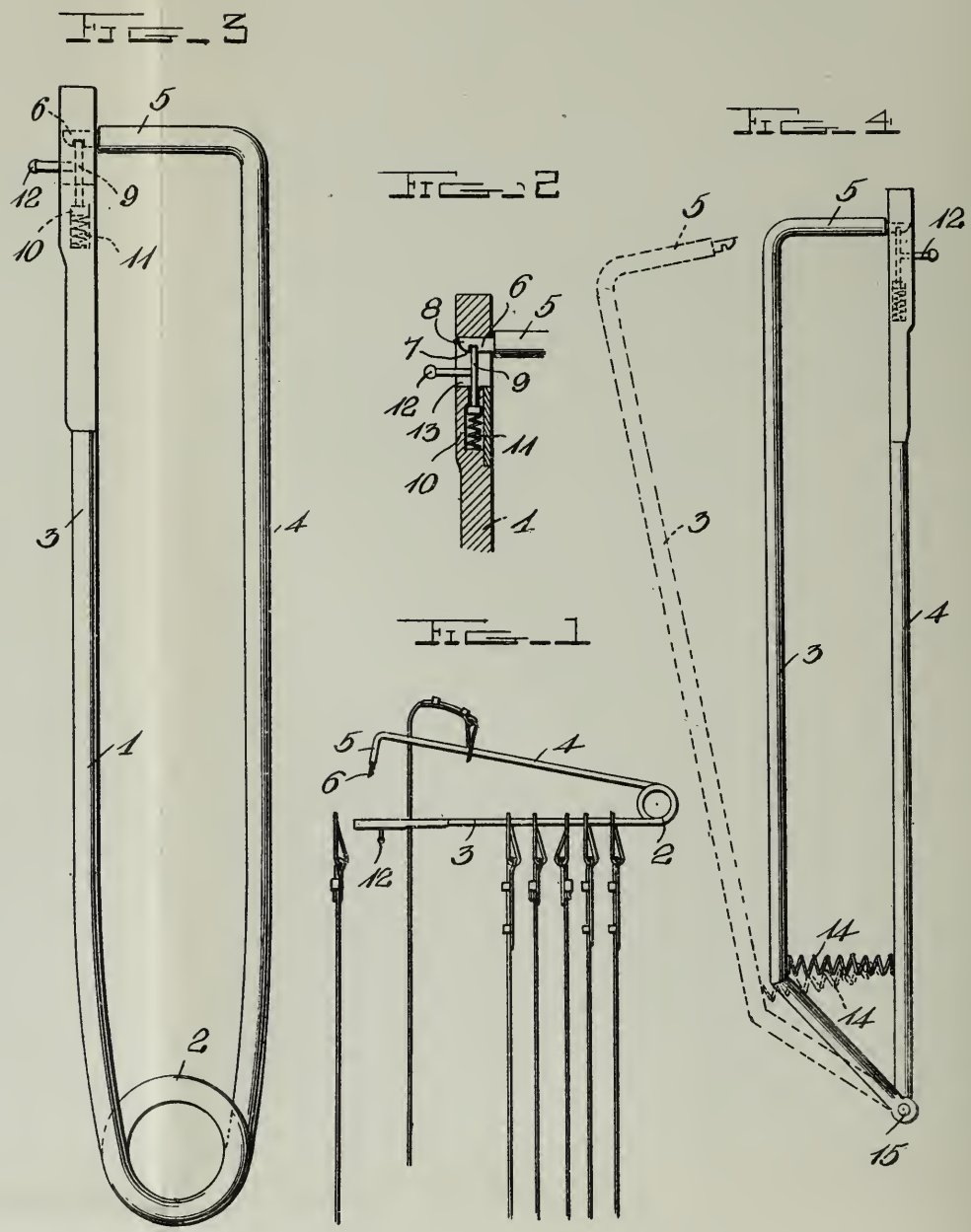
C. V. HAUGE,
F. H. FLANDERS.

APPELLANTS' (DEFENDANTS') EXHIBIT "4"

Patent to J. G. Cooner, December 29, 1908, No. 908,076

908,076.

Patented Dec. 29, 1908.



Witnesses
 C. H. Griesbauer

Inventor
 John G. Cooner
 By *A. B. Wilson & Co.*
 Attorneys

UNITED STATES PATENT OFFICE.

JOHN G. COONER, OF MACON, GEORGIA.

DISPLAY DEVICE.

No. 908,076.

Specification of Letters Patent.

Patented Dec. 29, 1908.

Application filed August 10, 1908. Serial No. 447,801.

To all whom it may concern:

Be it known that I, JOHN G. COONER, a citizen of the United States, residing at Macon, in the county of Bibb and State of Georgia, have invented certain new and useful Improvements in Display Devices; and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

My invention relates to devices for displaying articles of merchandise, and particularly to devices for supporting and displaying belts.

The object of the invention is to provide a cheap and efficient device of this character upon which the belts may be hung so as to display the same, and whereby any belt may be selected from a number of belts upon the rack without removing the others.

A further object of the invention is the provision of means for automatically locking the parallel bars of the rack together so that the belts thereon cannot be removed.

With these and other objects in view, the invention consists of certain novel features of construction, combination and arrangement of parts, as will be more fully described and particularly pointed out in the appended claim.

In the accompanying drawings, Figure 1 is a side elevation of the device with a number of belts attached thereto, and showing how a particular belt may be removed without removing the remainder on the rack, Fig. 2 is a fragmentary longitudinal section showing the locking device, Fig. 3 is an enlarged side elevation, Fig. 4 is a modified form shown in side elevation.

Referring more especially to the drawings, and particularly to Figs. 1 and 2, 1 represents a single strip of metal preferably in the form of heavy wire which is bent intermediate its length in the manner of safety pins as at 2, to form a spring loop, which connects the parallel sides 3 and 4 of the device. At one end the device is bent at right angles to form the locking extension 5, which is reduced at its extreme end as at 6, and provided with a latch receiving notch 7, and a beveled end 8, which throws the latch bar 9

out of normal so that the device is locked automatically. The latch bar 9 is carried by a casing 10, which is secured to the extreme end of the bar 3, and is impelled to normally engage the notch 7 by a spiral spring 11. A suitable operating handle 12 is formed integral upon the bar 9, and projects through the slot 13, formed in the casing 10.

In the modification shown in Fig. 3 the spring loop is dispensed with, and a spiral spring 14 is arranged between the parallel bars at the opposite end from the latch portion so as to normally spread the members as shown in dotted lines. With this type of construction two halves 3 and 4 are hinged together at their rear ends as at 15, or the material may be greatly attenuated at this point to permit free movement of the parts.

From the foregoing description, taken in connection with the accompanying drawings, the construction and operation of the invention will be readily understood without requiring a more extended explanation.

Various changes in the form, proportion and the minor details of construction may be resorted to without departing from the principle or sacrificing any of the advantages of this invention as defined in the appended claim.

Having thus described my invention, what I claim and desire to secure by Letters Patent is:—

A device of the class described comprising a pair of parallel members connected together at one end, one of said bars having its free end bent at right angles to its longitudinal plane and being notched, and a spring bolt carried by the other member at its free end adapted to engage said notch, said spring bolt being normally pressed toward the end of said member, the end of said spring bolt member being extended only slightly beyond the end of the notch member, whereby articles may be slipped from one member to the other.

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

JOHN G. COONER.

Witnesses:

ROLAND T. MAHONE,
F. T. VINCENT.

APPELLANTS' (DEFENDANTS') EXHIBIT "5"

Patent to Jacques Rousso, April 9, 1912, No. 42,398

DESIGN.

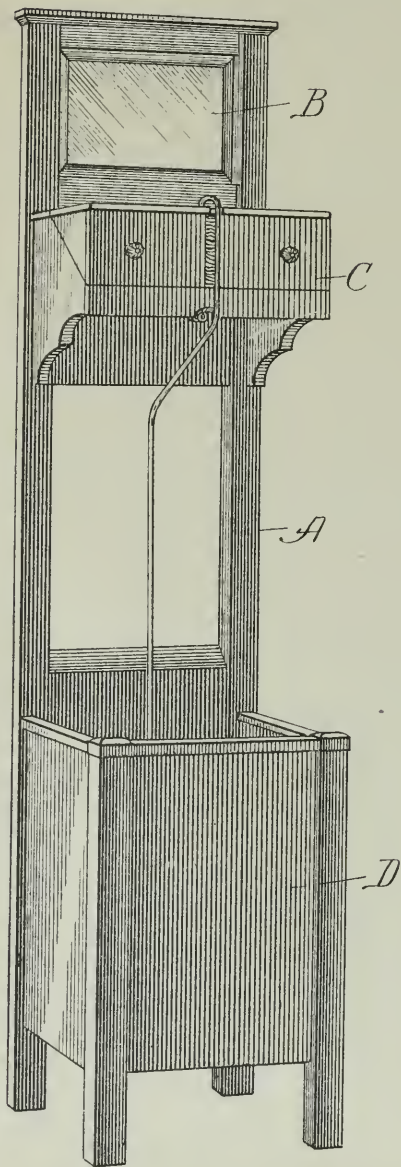
J. ROUSSO.

TOWEL CABINET.

APPLICATION FILED JAN. 5, 1912.

42,398.

Patented Apr. 9, 1912.



Witnesses:

John Enders
Henry A. Parks

Inventor:

Jacques Rouso,
by Sheridan, Winson, Scott & Richmond,
Attys.

UNITED STATES PATENT OFFICE.

JACQUES ROUSSO, OF CHICAGO, ILLINOIS.

DESIGN FOR A TOWEL-CABINET.

42,398.

Specification for Design.

Patented Apr. 9, 1912.

Application filed January 5, 1912. Serial No. 669,709. Term of patent 14 years.

To all whom it may concern:

Be it known that I, JACQUES ROUSSO, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented a new, original, and ornamental Design for a Towel-Cabinet, of which the following is a specification.

Referring to the accompanying drawing which forms a part of this specification the figure is a perspective view of a towel cabinet showing my new design.

In the particular embodiment of my design shown in the drawing the standards

A support a mirror B at their top. Below this is a box or cabinet C containing clean towels. Directly underneath the box C is a receptacle D for soiled towels.

I claim:

The ornamental design for a towel cabinet as shown.

In testimony whereof, I have subscribed my name.

JACQUES ROUSSO.

Witnesses:

SAM WOLF,

CARL A. RICHMOND.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

APPELLANTS' (DEFENDANTS') EXHIBIT "6"

Patent to T. K. Taylor, February 4, 1913, No. 1,052,292

T. K. TAYLOR.

TOWEL RACK.

APPLICATION FILED FEB. 10, 1912.

1,052,292.

Patented Feb. 4, 1913.

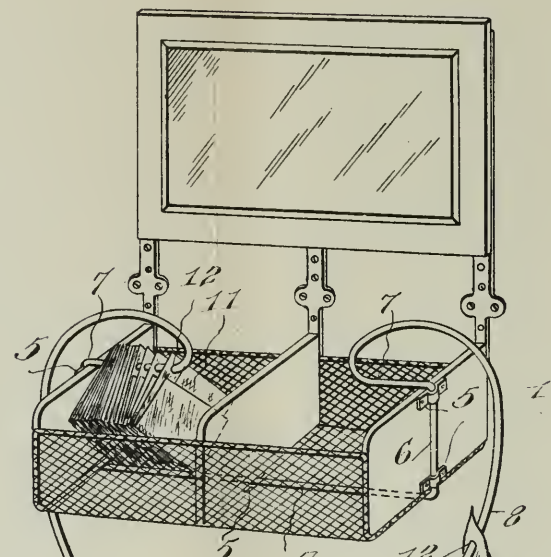


Fig. 1.

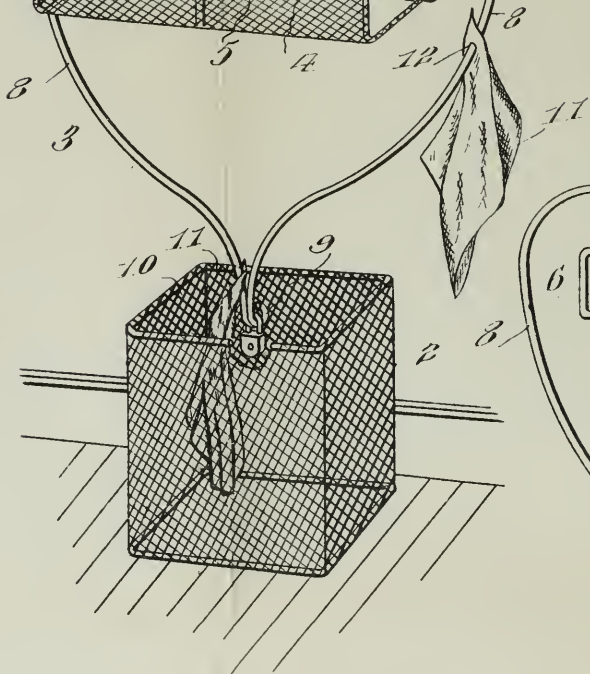
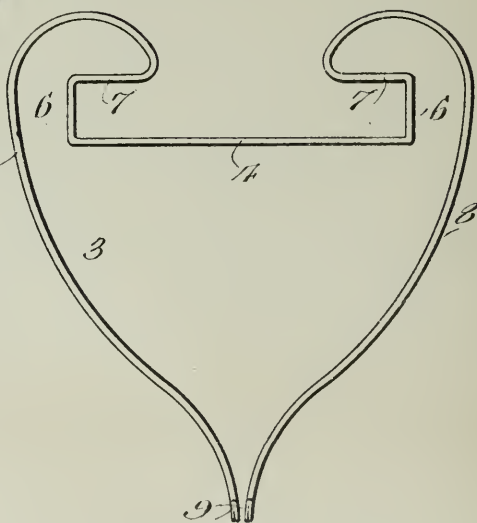


Fig. 2.



Witnesses

Frank Laughlin
Wm. Koertge

Inventor

Thomas K. Taylor

By *Victor J. Evans*

Attorney

UNITED STATES PATENT OFFICE.

THOMAS KING TAYLOR, OF WESLEYVILLE, PENNSYLVANIA.

TOWEL-RACK.

1,052,292.

Specification of Letters Patent.

Patented Feb. 4, 1913.

Application filed February 10, 1912. Serial No. 676,747.

To all whom it may concern:

Be it known that I, THOMAS K. TAYLOR, a citizen of the United States, residing at Wesleyville, in the county of Erie and State of Pennsylvania, have invented new and useful Improvements in Towel-Racks, of which the following is a specification.

The present invention relates to improvements in towel racks, the object of the invention being to provide a rack for towels which may be connected with a cabinet, mirror or the like, and which is adapted to support a number of clean towels and to direct the same to a suitable receptacle after each of the towels has been used successively.

With the above recited object in view, and others of a similar nature, the invention resides in the novel construction, and arrangement of towel racks set forth in and falling within the scope of the appended claim.

In the drawing, Figure 1 is a perspective view of a towel rack constructed in accordance with the present invention and showing the same in applied position upon a cabinet. Fig. 2 is an elevation of the rack, the connecting members thereof being disengaged.

Referring now to the drawing in detail, the numeral 1 designates a suitable mirrored cabinet, and 2 a receptacle adapted for the reception of soiled towels which is arranged below the cabinet.

The cabinet and the receptacle may be of any desired or preferred construction, and the numeral 3 designates the improved towel rack. This rack is constructed of a single piece of wire, and comprises a straightened longitudinally extending member or portion 4 which is sustained upon the bottom of the cabinet 1, through the medium of suitable substantially U-shaped clips 5. The opposite extremities of the longitudinal member 4 are provided with vertical extensions 6, the said extensions being also secured to the cabinet through the medium of clips, similar to the clips 5. The vertical members 6 are bent to provide horizontal inturned portions 7, the same being arranged at an angle to the cabinet and to the vertical extensions 6 and these horizontal members are curved upwardly and outwardly to

provide the substantially goose neck shaped side members of the rack. The free extremity of both of the arms 8 are formed with open eyes or hook members 9, and these members are adapted to be brought into engagement with each other to close or lock the said arms 8. The arms 8 are arranged directly above the open top or mouth 10 of the receptacle 2 and it will be noted that by parting the said hooked ends 9 the towels 11, which are arranged upon the arms 8 by being provided with suitable eyes or openings 12, may be removed from the rack and deposited within the receptacle 2. If desired the hooks may be made of such a size as to permit the towels dropping by gravity within the said receptacle, the eyes, in which instance being, of course, of a greater area than the width of the hooks. The clean towels are arranged upon the horizontal portion 7 of the rack, and as each of the towels are used the one nearest the curved or goose-neck arms 9 is brought over the said arms and after being used is allowed to drop by gravity until the same is deposited upon the closed ends of the arms.

From the above description taken in connection with accompanying drawing, the simplicity of the device, the sanitary result produced thereby, as well as the many other advantages of the structure will, it is thought commend themselves to those skilled in the art to which such inventions appertain without further detailed description. It is to be understood, however, that the device is not to be limited in its connection with the cabinet and receptacle shown and described, and that the device may be employed in schools, stores, barber shops and public places.

Having thus described the invention, what I claim is:—

In a device for the purpose set forth, in combination with a divided receptacle, a towel rack, said rack being constructed of a single piece of material and embodying a longitudinal member which is arranged centrally below the cabinet, vertical members which are secured to the opposite sides of the cabinet, inturned longitudinally extending members which overlie the open top of

the compartments and which are arranged directly above the first named member, upper and outwardly curved members which have inturned sides and which terminate in
5 substantially vertical members, and the terminals of the last named members being each provided with hooks.

In testimony whereof I affix my signature in presence of two witnesses.

THOMAS KING TAYLOR.

Witnesses:

MURVIN A. PUTNAM,
MARY E. V. TAYLOR.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

APPELLANTS' (DEFENDANTS') EXHIBIT "9"

Patent to L. Straub, September 17, 1912, No. 1,038,984

L. STRAUB.
TOWEL RACK.

APPLICATION FILED DEC. 22, 1911.

1,038,984.

Patented Sept. 17, 1912.

Fig. 1.

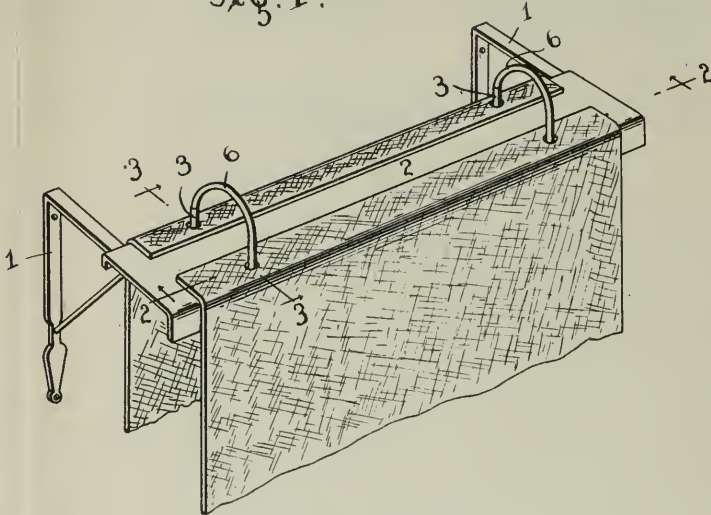


Fig. 2.

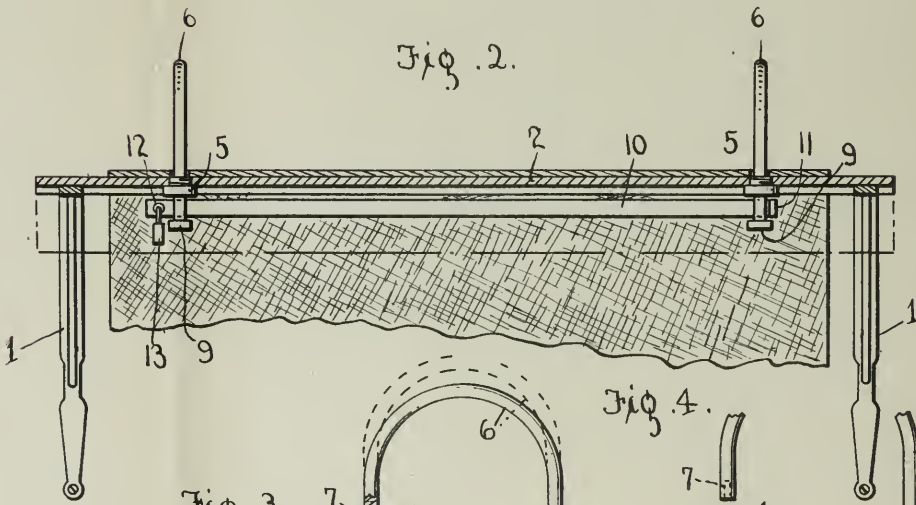


Fig. 3.

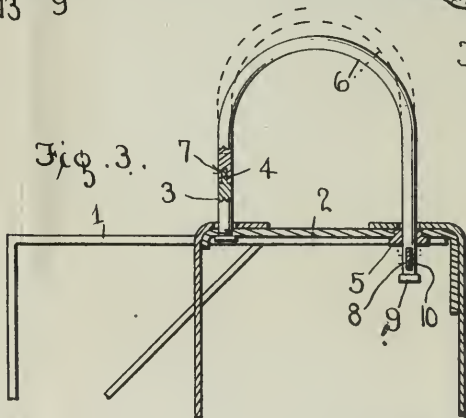
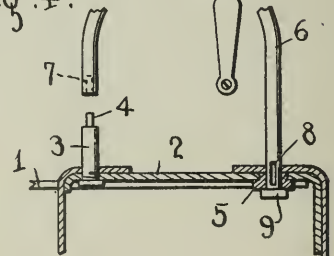


Fig. 4.



Inventor

Louis Straub

Witnesses

L. B. James
C. E. Hunt.

by *A. B. Wilson* Atty

Attorneys

UNITED STATES PATENT OFFICE.

LOUIS STRAUB, OF DENVER, COLORADO.

TOWEL-RACK.

1,038,984.

Specification of Letters Patent.

Patented Sept. 17, 1912.

Application filed December 22, 1911. Serial No. 667,276.

To all whom it may concern:

Be it known that I, LOUIS STRAUB, a citizen of the United States, residing at Denver, in the county of Denver and State of Colorado, have invented certain new and useful Improvements in Towel-Racks; and I do declare the following to be a full, clear, and exact description of the invention, such as will enable others skilled in the art to which it appertains to make and use the same.

This invention relates to improvements in towel racks.

One object of the invention is to provide a towel rack having means whereby a supply of clean towels may be securely fastened thereto in such manner as to permit the same to be successively swung around into position for use.

Another object is to provide a rack of this character having means whereby the towels hung thereon will be securely fastened or locked against removal from the rack.

With these and other objects in view, the invention consists of certain novel features of construction, and the combination and arrangement of parts as will be more fully described and claimed.

In the accompanying drawings; Figure 1 is a perspective view of my improved towel rack; Fig. 2 is a vertical sectional view on an enlarged scale taken on the line 2—2 of Fig. 1; Fig. 3 is a cross sectional view thereof taken on the line 3—3 of Fig. 1 and showing in dotted lines the open position of the towel fastening member; Fig. 4 is a similar view showing one of the towel fastening members in a released and open position to permit the towel to be applied to or removed from the rack.

My improved towel rack comprises a pair of brackets 1, which may be secured to a wall or other suitable support and to the upper arms or members of which is secured a towel receiving plate 2 having its outer and inner edges bent downwardly at an angle to form supports for the towels hung thereon. The plate 2 is secured to the outer portions of the upper bars of the bracket and is spaced a sufficient distance from the wall or other support to which the brackets are secured to permit the towels to be readily reached and swung from the inner to the outer edge of the plate as will be hereinafter more fully described.

In order to hold the towels in position and to securely fasten the same to the rack, I

provide towel holding members comprising studs 3 secured in the plate 2 near the ends thereof and adjacent to the inner edge of the same as shown. The upper ends of the studs are reduced to form pins 4. In the plate 2 near the front or outer edge thereof and in line with the studs 3 are arranged bushings 5 preferably provided with heads or enlarged outer ends and having a threaded engagement with the apertures in the plate as shown. Slidably engaged with the bushings 5 are the bail shaped outer sections 6 of the towel fastening members. The inner ends of the bail shaped members 6 are considerably shorter than the outer ends and in said inner ends are formed sockets 7 with which the pins 4 on the studs 3 are engaged when the members are in operative position. The lower ends of the sections 6 extend a suitable distance below the bushings 5 with which they are engaged and in the projecting lower ends of said sections are formed slots 8 while on the extremities of the projecting ends are formed heads 9.

Adapted to be engaged with the slots 8 in the projecting ends of the sections 6 is a locking bar 10 having on one end a head or offset lug 11 which forms a stop and prevents this end of the bar from being pulled through the slots 8. In the opposite end of the bar is formed a lock receiving aperture 12 with which is adapted to be engaged a padlock 13 whereby the bar 10 is locked against removal. When the bar 10 is engaged in the slots 8 the bail shaped sections 6 of the towel fastening members will be securely locked and the sockets 7 in the shorter end thereof held in engagement with the pins 4 in which position the studs 3 and sections 6 will form practically continuous bail shaped bars or rods for receiving and holding the towels in engagement with the rack.

In using my improved rack any desired number of towels are hung upon the studs 3 after the members 6 have been lifted to the position shown in dotted lines in Fig. 3 and in full lines in Fig. 4, said towels being provided with eyelets or holes to receive the studs 3. After the clean towels have thus been hung upon the studs the sections 6 are drawn down into engagement with the studs and said sections fastened and locked in the manner described. After thus securing the clean towels they may be successively swung around from the studs 3 over the bail shaped

sections 4 to an operative position wherein they will be suspended from the rack by the outer sections 6 of the holding members. In thus arranging the towels when one towel has become soiled another may be quickly swung around in position so that each successive person having occasion to use the towels may readily supply himself with a clean towel by swinging one of the latter around over the bail shaped holding members from the rear to the front side of the rack as will be readily understood.

By providing the heads 9 on the lower ends of the sections 6, the latter are prevented from being pulled upwardly to a sufficient extent to entirely disengage the lower ends thereof from the bushings 5. The bushings 5 are provided to form a more substantial connection between the bail shaped sections 6 of the holding members and the adjacent parts of the towel supporting plate 2 and also to relieve the edges of the openings in the plate from wear which would occur from the movement of the sections 6 if they were engaged directly in the openings in the plate.

From the foregoing description taken in connection with the accompanying drawings, the construction and operation of the invention will be readily understood without requiring a more extended explanation.

Various changes in the form, proportion and the minor details of construction may be resorted to without departing from the principle or sacrificing any of the advantages of the invention as claimed. 35

Having thus described my invention, what I claim is:

A towel rack comprising a flat plate having its opposite longitudinal edges bent downwardly to form towel engaging ledges, means for rigidly supporting the plate in a horizontal position, studs secured adjacent to one edge of the latter, the upper ends of which are reduced to form pins, bails movably mounted upon the plate one end of which are provided with sockets to receive the pins of the studs, a locking bar slidably and detachably located in slots in the lower ends of the bail adjacent the head thereof, whereby when the bar is withdrawn from the slots the bail can be elevated and turned to expose the pins of the studs, and means for holding the bar to prevent longitudinal movement thereof. 40 45 50 55

In testimony whereof I have hereunto set my hand in presence of two subscribing witnesses.

LOUIS STRAUB.

Witnesses:

FRANK H. SPENCER,
MICHAEL A. SWEENEY.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."

APPELLANTS' (DEFENDANTS') EXHIBIT "7"

Patent to Guy Reid, July 15, 1913, No. 1,067,622

G. REID.
 COMBINED TOWEL HOLDER AND LOCK.
 APPLICATION FILED JULY 18, 1912.

1,067,622.

Patented July 15, 1913.

Fig. 1.

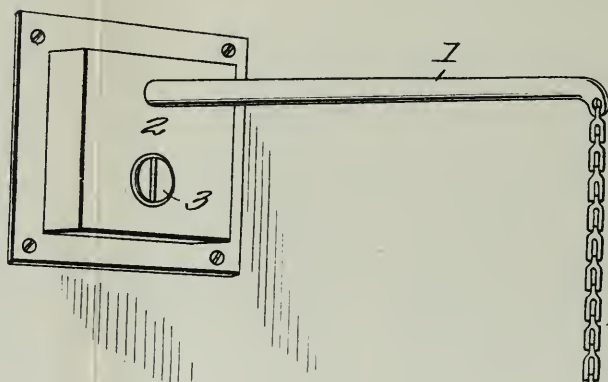


Fig. 2.

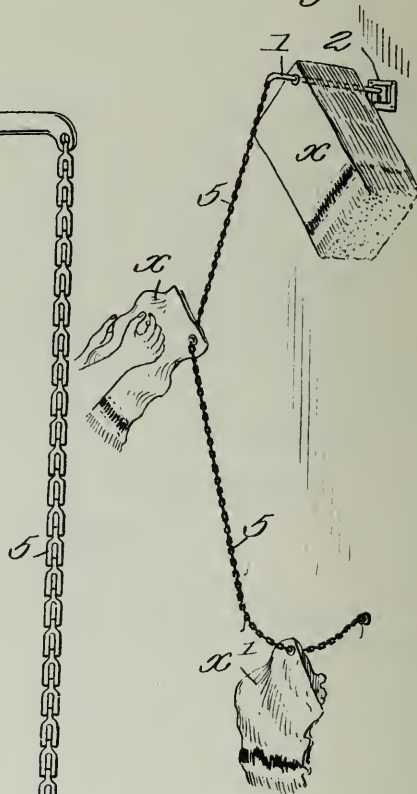


Fig. 3.

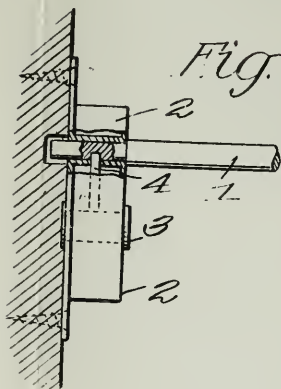
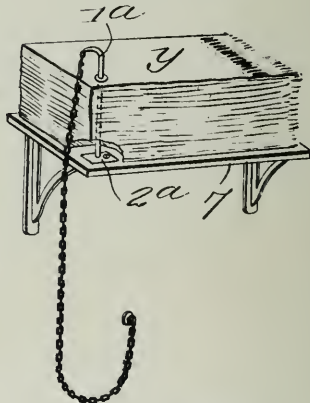


Fig. 4.



WITNESSES
S. E. Wade
Amos H. Kent

INVENTOR
 GUY REID
 BY *Alvin H. Lee*

ATTORNEYS

UNITED STATES PATENT OFFICE

GUY REID, OF OSAGE CITY, KANSAS.

COMBINED TOWEL HOLDER AND LOCK.

1,067,622.

Specification of Letters Patent.

Patented July 15, 1913.

Application filed July 18, 1912. Serial No. 710,294.

To all whom it may concern:

Be it known that I, GUY REID, a citizen of the United States, and a resident of Osage City, in the county of Osage and State of Kansas, have invented an Improved Combined Towel Holder and Lock, of which the following is a specification.

As is well known, the surreptitious abstraction of towels in hotels involves a considerable financial loss to the proprietors, and I have devised an improved means for holding and securing towels in toilet and other rooms in such manner as to prevent their removal without interfering with their convenient use. To these ends, I provide the towels with metal eyelets and string them on a bar or rod which is supported in, and locked to, a fixed support, and to whose outer end a chain is attached, the other end of the latter being secured to a wall staple or ring. The towels are normally held on the bar or rod, but may be slid off and down on the pendent chain so as to be conveniently used, the soiled towel hanging on the loose portion of the chain.

In the accompanying drawing Figure 1 is a perspective view of my invention. Fig. 2 is a perspective view illustrating the practical use of the same. Fig. 3 is a detail view partly in section illustrating the connection of the towel-supporting bar or rod with a locking support. Fig. 4 is a perspective view illustrating a modification.

I will first describe the invention as illustrated in Figs. 1, 2, and 3. A horizontal bar or rod 1 is inserted in a support consisting of a lock case 2 which is secured by screws, or other means, to a vertical fixed object, say a wall or a window frame. The rod passes through the lock proper 2, and the latter is provided with a rotatable device 3 adapted for operating a tumbler or locking bar 4 which is adapted to engage a notch in the bar, as shown in Fig. 3. By inserting a key in the rotatable device 3, the bar or rod 1 may be unlocked and withdrawn from the support, when it is required to remove or apply towels.

In Fig. 2, a number of towels x is shown hanging from the bar or rod 1, it being understood that the several towels of the pack have been first arranged with the holes, which are near one corner, in the desired coincidence, and the bar or rod 1 inserted

through them and then engaged with the locking support 2.

A chain, or wire rope, 5 is attached to and pendent from the free end of the towel-support 1, and its lower end is permanently secured to a wall staple or ring 6. As shown in Fig. 1, the lower end of the chain is carried upward to the point of attachment 6, thus forming a loop from which the soiled towels x' depend, as indicated in Fig. 2.

It will be understood that, when a towel is required for use, it is pulled off the bar or rod 1 and drawn down on the chain, as indicated in Fig. 2, and then, after using, it is allowed to fall and descend by gravity to the position indicated at x' . This operation is repeated as often as a towel is desired, until the supply is exhausted, when the bar or rod 1 is unlocked and the soiled towels drawn off the chain and rod and a fresh pack is applied and suspended, like the former ones, in the manner shown in Fig. 2.

In the modification shown in Fig. 4, a number of towels y is applied to a bar or rod 1^a which is arranged vertically instead of horizontally, as in the first case, the locking device 2^a being secured to a shelf 7 supported horizontally on wall brackets. In other respects the construction and operation are precisely the same as before described. In other words, as shown in Fig. 4, the towels are supported on the shelf 7 instead of hanging directly from a rod or bar passing through them. This, of course, relieves the towels from strain and is in some respects more advantageous.

What I claim is:—

The improved apparatus for holding towels and securing them while permitting their use, the same comprising a chain, a fixed wall-ring to which one end of the chain is attached, a lock fixed to the wall above said ring, a rod adapted to enter and detachably engage said lock and extending therefrom to such length as adapts it to serve as a towel holder, the free end of the rod being connected with the chain which depends therefrom, as shown and described.

GUY REID.

Witnesses:

D. A. RAMSEY,
JAS. HEPWORTH.

APPELLANTS' (DEFENDANTS') EXHIBIT "8"
Patent to Heins & Galland, November 11, 1913, No. 1,078,501

T. HEINS & E. R. GALLAND.
TOWEL RETAINER.
APPLICATION FILED JULY 24, 1912.

1,078,501.

Patented Nov. 11, 1913.

Fig 1

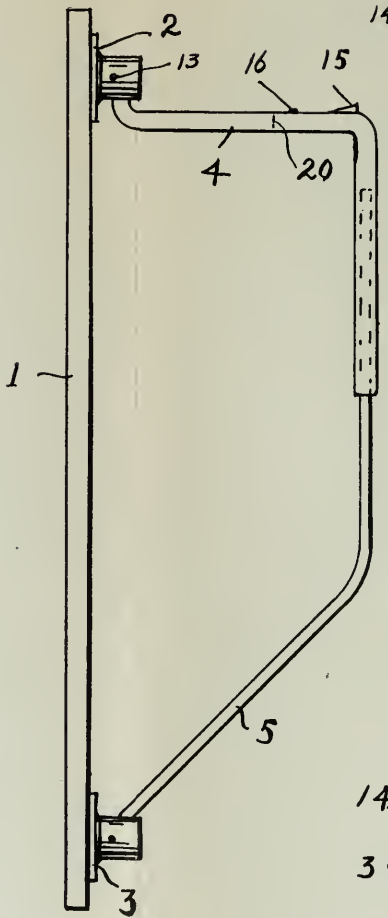


Fig 2

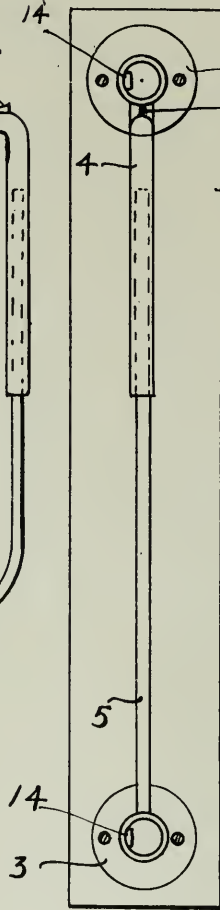


Fig 3

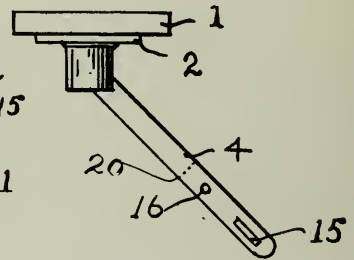


Fig 4

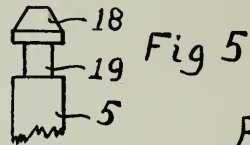
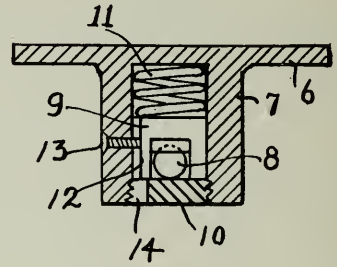


Fig 5

Fig 6

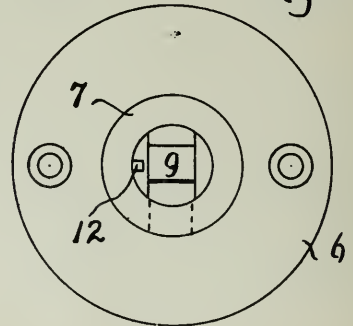
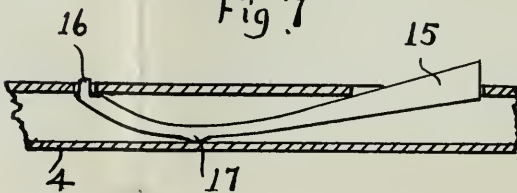


Fig 7



WITNESSES:

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UNITED STATES PATENT OFFICE.

THEODORE HEINS AND EDWARD R. GALLAND, OF SAN FRANCISCO, CALIFORNIA.

TOWEL-RETAINER.

1,078,501.

Specification of Letters Patent.

Patented Nov. 11, 1913.

Application filed July 24, 1912. Serial No. 711,348.

To all, whom it may concern:

Be it known that we, THEODORE HEINS and EDWARD R. GALLAND, citizens of the United States, residing at San Francisco, in the county of San Francisco and State of California, have invented a new and useful Towel-Retainer, of which the following is a specification in such full and clear terms as will enable those skilled in the art to construct and use the same.

This invention relates to a towel retainer and its object is to provide means whereby a supply of fresh towels may be left in a restaurant, saloon, or office, while at the same time, an individual towel is provided for each person, but which towel cannot be removed from the retainer, thus preventing the loss of towels.

It will be understood by those skilled in the art that it is common for office and restaurant supply laundries to furnish a given number of towels per week for the use of patrons. These towels are usually left in a cabinet loose and inevitably disappear in larger or smaller numbers, which disappearance is avoided by the use of the retainer herein disclosed.

In the drawings in which the same numeral of reference is applied to the same portion throughout the several views, Figure 1 is a side elevation of the retainer complete, Fig. 2 is a front elevation of the retainer, Fig. 3 is a plan view of the retainer. Fig. 4 is a horizontal sectional view of one of the brackets for holding the towel support, Fig. 5 is a view of the end of one of the towel supports showing a groove therein for locking said support in place, Fig. 6 is a front elevation of one of the brackets for holding the towel support with the rock retainer removed therefrom, and Fig. 7 is a sectional view on an enlarged scale showing a portion of the towel supporting tube and showing the catch used to prevent the towels from falling off the support.

The numeral 1 represents a board to which the towel supporting brackets 2 and 3 are secured and which board is intended to be secured to the wall where the towels are to be used. The brackets 2 and 3 are suitably secured to the board by means of screws. The brackets support a tube 4 and rod 5 respectively, the rod 5 extending into the tube 4 far enough to prevent its removal therefrom, while at the same time, enough movement is

permitted to allow the tube 4 to slip down far enough to be removed from the bracket 2.

The supporting brackets comprise a flat disk-like portion 6, from which disk a hollow boss 7 extends. The hollow boss has an opening 8 therein through which the tube or rod, as the case may be, may be inserted. Slidable within the hollow boss is a lock 9, said lock being held against the retaining plug 10 by means of a spring 11. The lock has a slot 12 in one side and a screw 13 is passed through the boss to prevent the lock from rotating out of the proper position. The plug 10 has a slot 14 therein for the insertion of a key to push the lock 9 back out of engagement with the rod or tube as the case may be.

In order to retain the towels upon the upper portion of the tube 4, a spring catch 15 is used. This catch has a portion 16 extending through a small hole in the tube 4, and it has a small projection at 17 to bear against the bottom of the tube and thus give the necessary spring to the catch.

Both the tube and the rod have the ends thereof, which are inserted in the brackets, beveled, as shown at 18 and each of them has a groove as shown at 19 for the lock to pass into to secure the tube and rod in place. In order to strengthen the tube 4, it has a rod inserted therein which terminates at the dotted line indicated at 20. It will be understood that any suitable form of lock may be used for securing the rod and tube in their proper places.

In use a considerable number of towels are placed upon the upper portion of the tube 4, each towel having a suitable gromet placed in one corner thereof for hanging the towels on the tube. When used the first towel is pulled down over the latch and after being used is dropped down on the rod 5 out of the way, a fresh towel being ready for the next user.

The towel support may be turned from side to side, it being indicated in Fig. 3 as turned from the right of the supporting bracket so that the support occupies as little space as possible.

Having thus described our invention what we claim as new and desire to secure by Letters Patent of the United States, is as follows:

1. A towel retainer comprising a support, brackets carried thereby, a towel supporting

rod having a horizontal portion and a downwardly extending portion, means to lock said rod to the brackets and to permit said rod to be turned about an axis parallel to the support and passing through the brackets, and means to loosely retain the towels upon the substantially horizontal portion of the rod, substantially as described.

2. In a towel retainer, a support, two brackets carried thereby, a jointed rod supported by said brackets and movable about an axis and passing through both of said brackets, means to lock the ends of the rod

to the brackets, and a spring catch carried upon the upper portion of the rod to loosely retain towels placed thereon, substantially as described.

In testimony whereof we have hereunto set our hands this 17 day of July A. D. 1912, in the presence of the two subscribing witnesses.

THEODORE HEINS,
EDWARD R. GALLAND.

Witnesses:

C. P. GRIFFIN,
L. H. ANDERSON.

Copies of this patent may be obtained for five cents each, by addressing the "Commissioner of Patents, Washington, D. C."
